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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

YURI FASHIONS CO., LTD.,

Petitioner,

v.

THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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February 13, 1987

QUESTIONS PRESENTED FOR REVIEW

1. Did the courts below err in holding that section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), authorized the delegates of the President to regulate the tariff treatment of products of insular possessions and territories of the United States, and is such holding contrary to the Constitution?

2. Did the lower courts err in holding that section 204 of the Agricultural Act, as amended, gives power to the President and his delegates to exclude from entry by regulation products which meet the definition of products of insular possessions in General Headnote 3(a) of the Tariff Schedules of the United States duly enacted by Congress and theretofore so recognized by Customs for marking and entry purposes?

3. Did the courts below err in their interpretation of 19 U.S.C. 1202, General Headnote 3(a), in holding that sweaters subject to substantial processing in the Northern Mariana Islands amounting to over 50% of their total value were nevertheless products of the Republic of Korea?

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In the

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OCTOBER TERM, 1986

YURI FASHIONS CO., LTD.,

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT
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To The Honorable Chief Justice and the
Associate Justices of the Supreme Court:

Yuri Fashions Co., Ltd. petitions for a writ of certiorari to review the judgment

of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The decision of the U. S. Court of Appeals for the Federal Circuit on November 18, 1986 is to be reported at 5 CAFC ___, ____ F.2d ____ (1986). The underlying judgment and opinion of the U.S. Court of International Trade in this case, Slip Op. 86-33 (March 24, 1986), which the CAFC affirmed, is reported at 11 CIT ____, 632 F. Supp. 41 (1986). The opinions of the courts below are reproduced in the Appendix to this Petition, pages 1a through 41a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), 2101(c) and 2106. The judgment of the Court of Appeals for the Federal Circuit is dated, and was entered on, November 18, 1986.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

Article IV, Section 3, Clause 2 (see Appendix, page 79a).

Statutes

Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, Pub. L. 94-241 [H.J. Res. 549] March 24, 1976, 90 Stat. 263, reprinted in [1976] U.S. Code Cong. & Ad. News 263, (amended 1983), reprinted in 48 U.S.C.A. 1681 note (see Appendix, page 87a for pertinent text).

Section 204, Agricultural Act of 1956, as amended by Pub. L. 87-488, June 19, 1962 (7 U.S.C. 1854) (see Appendix, page 86a).

Tariff Schedules of the United States, (19 U.S.C. 1202):

General Headnote 3(a) (see Appendix, page 94a for pertinent text).

General Headnote 10(a) (see Appendix, page 96a).

Regulations

19 C.F.R. 12.130:

Interim Regulation, T.D. 84-71, 49 Fed. Reg. 31248 (August 3, 1984) (see Appendix, page 105a for pertinent text).

Final Regulation, T.D. 85-38, 50 Fed. Reg. 8710-8726 (March 5, 1985) (see Appendix, page 105a note 2).

STATEMENT OF THE CASE

A. Procedural History.

This case involves the exclusion from entry into the United States of petitioner's merchandise by the United States Customs Service (Customs) in November, 1984. Petitioner's merchandise, girls' and ladies' sweaters of man-made fibers, was imported from the Commonwealth of the Northern

Mariana Islands (CNMI) and satisfied the requirements of General Headnote 3(a) of the Tariff Schedules of the United States (TSUS). The exclusion was grounded on the lack of a textile quota visa from the Republic of Korea (Korea) which was claimed to be required by 19 C.F.R. 12.130, published as an interim regulation, T.D. 84-171, 49 Fed. Reg. 31248, August 3, 1984 (App. 105a). The exclusion was duly protested as being contrary to law in that the application of the regulation to products of the CNMI was ultra vires and void, not in accordance with General Headnote 3(a), 19 U.S.C. 1202, or pursuant to power delegated by section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. 1854, or any other statute, and, upon denial of said protest by operation of law, summonsed to the United States Court of International Trade. The Court's jurisdiction was based upon 28 U.S.C. 1581(a).

Because the interim regulation had become final, and was republished with certain changes in form though not substance as T.D. 85-38, 50 Fed. Reg. 8710-8726, March 5, 1985, petitioner also requested declaratory relief pursuant to 28 U.S.C. 1581(i) and 1585.

The Court of International Trade allowed the American Fiber/Textile/Apparel Coalition to intervene as defendant on that portion of the case seeking declaratory relief, but not on the underlying protested exclusion, and permitted the Resident Representative of the Commonwealth of the Northern Mariana Islands to appear as amicus curiae in the matter.

The action was submitted on cross-motions by petitioner and respondent for summary judgment, with intervenor filing a memorandum in support of respondent United States' motion and the Commonwealth of the

Northern Mariana Islands filing a brief as amicus in support of petitioner's position.

The Court of International Trade granted summary judgment in favor of respondent. On appeal, the Court of Appeals for the Federal Circuit affirmed on the basis of the opinion of the Court of International Trade.

B. Tariff Status of the Northern Mariana Islands

The Northern Mariana Islands were obtained by the United States by conquest during World War II, having been previously a Japanese mandate from the League of Nations. They formed part of the Trust Territory of the Pacific Islands, along with the Marshall Islands, the Federated States of Micronesia (formerly the Caroline Islands) and Palau, and have been administered by the United States since 1947 under the Trusteeship Agreement for the Trust Territory of the Pacific Islands, approved by the United

Nations Security Council, Lake Success, New York, April 2, 1947, ratified by Congress, July 18, 1947, 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189 (hereinafter "Trusteeship Agreement") (App. 80a). The Trusteeship Agreement was terminated in November 1986, with regard to most of the Trust Territory, including the Northern Marianas, and superseded by separately negotiated agreements (App. 97a). See page 10, infra.

The final status of the Northern Mariana Islands, after termination of the Trusteeship Agreement, was settled on the basis of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, Pub. L. 94-241 (H.J. Res. 549), March 24, 1976, 90 Stat. 263, reprinted in 48 U.S.C.A. 1681 note (hereinafter "Covenant") (App. 87a). In fact, much of the Covenant became effective even prior to the termination of the

Trusteeship Agreement. The Covenant, concluded on February 15, 1975, was the subject of negotiation between the United States and the people of the Northern Mariana Islands for approximately four years, beginning in 1972, and represented the culmination of twenty years of effort by the islanders to become part of the United States. See House Report 94-364, [to accompany H.J. Res. 549], 94th Cong., 1st Sess. 3 (1975).

The tariff status of the CNMI is set forth in section 603 of the Covenant (App. 90a). Basically, the CNMI is not within the customs territory of the United States. It may, consistent with the international obligations of the United States, levy duties upon goods entering its territory from anywhere outside the customs territory of the United States. Imports from the CNMI into the customs territory of the United States are to receive the same treatment as imports

into the customs territory from Guam, that is, insular possession treatment.[1] The provisions of section 603 of the Covenant became effective on January 9, 1978, by virtue of sections 1003(b) and 1004(b) thereof, through Pres. Proc. 4534, October 24, 1977, 42 Fed. Reg. 56593. The entire Covenant took full effect, and the Trusteeship Agreement terminated with respect to the CNMI, through Pres. Proc. 5564, November 3, 1986, 51 Fed. Reg. 40399 (App. 97a), which fully established the Northern Mariana Islands as a Commonwealth "in political union with and under the sovereignty of the United States." Id. See also Exec. Order

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1. At all times relevant herein, Guam has been accorded tariff treatment as an insular possession, as provided in General Headnote 3(a), TSUS; 19 C.F.R. 7.8.

12572, November 3, 1986, 51 Fed. Reg. 40401 (App. 101a).

C. Tariff Status of Petitioner's Merchandise

Petitioner has been importing sweaters similar to the excluded merchandise and produced by the same processes from the CNMI since 1983.[2] In July 1983, petitioner

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2. The processing can briefly be described: The sweaters are made of sweater components imported from Korea into Saipan, CNMI. In the case of the excluded merchandise, a front and back panel and two sleeve panels were imported.

These components were then prepared for manufacture into sweaters by being machine washed and hand pressed. The sleeve panels were thereafter sewn closed, the back and front panels sewn together, and the sleeve panels sewn to the body (front and back panels). Collars for the garment were knit in Saipan from imported yarn. The collars were then attached by a knitting process known as linking. Thereafter the entire sweaters so produced were heat set by "baking" them at about 100°F, which causes shrinkage of the acrylic fibers, thus sizing the garments and giving them a flatter

requested a ruling from Customs Headquarters that the processes used to produce the sweaters in the CNMI would qualify them as products of the CNMI and for duty-free treatment under General Headnote 3(a) TSUS, pursuant to section 603 of the Covenant, granting the CNMI the same tariff status eligibility for General Headnote 3(a) treatment as Guam.

Petitioner received Ruling # 071476 from Customs (App. 42a), which stated that the sweaters, if produced as there set out, qualify as products of the Northern Mariana

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(cont.)
appearance with better coverage. After the heat-setting, the garments must be mended, i.e., individually trimmed by hand, and holes sewn closed, with hand-knitting of holes, when necessary. Finally, the garments are labeled and packed for shipment to the United States. The costs of labor in Saipan and the profit of the Saipan producer equal more than 50% of the total value of each garment, calculated under 19 C.F.R. 7.8, as indicated on Customs Form 3229 filed with the rejected entry and signed and verified by the Chief, Customs Service Division, CNMI.

Islands, and are eligible, therefore, for duty-free treatment under General Headnote 3(a), TSUS.[3] Customs determined that the processing described is sufficiently extensive to qualify those sweaters as products of the CNMI, and no mention is made of "substantial transformation," which is the "test" enunciated by 19 C.F.R. 12.130. The

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3. The Court of International Trade cited and quoted the ruling, 632 F. Supp. 41, 46 n. 8 (App. 21a), for the proposition that Customs always has required substantial processing (true, but a different test than the substantial transformation test sought to be applied) in addition to value added tests for an article imported from the insular possessions to be considered a product thereof, without mention of the fact that this specific ruling recognized plaintiff's sweaters, before the promulgation of 19 C.F.R. 12.130, as products of the CNMI, nor of the fact that since the substantial processing test was known to Congress when General Headnote 3(a) was adopted in 1962, it was the substantial processing test, and not the substantial transformation test, which was adopted by that legislation.

ruling states that what is required are "substantial processing operations." It also makes clear that such treatment had been accorded to the products of Guam by attaching Ruling # 067217, April 10, 1981 (App. 52a). The latter ruling had been preceded, moreover, by Ruling # 027371, May 14, 1973 (App. 72a), antedating the passage of the Covenant establishing the CNMI in 1975, and by others, all to the same effect: that substantial processing, not substantial transformation, renders an article imported from an insular possession a product thereof (App. 67a).

Moreover, in response to another ruling request by petitioner, Customs issued Ruling # 722754 on August 9, 1983 (App. 56a), which states that if the sweaters were found to be a product of the CNMI because of the substantial processing and the addition of 50% to the value required by General Headnote 3(a), TSUS, they could be marked "Made in Northern

Mariana Islands (U.S.A.)" or "Product of the Northern Mariana Islands (U.S.A.)" for purposes of the marking statute, 19 U.S.C. 1304.

Thus the sweaters, the subject of this action, which were excluded from entry by application of 19 C.F.R. 12.130, would, prior to the promulgation of that regulation, have been admitted to the United States duty-free and not subject to any quota restraints, even though in both 1983 and 1984, the United States was a party to the International Multifiber Textile Arrangement, December 20, 1973, 25 U.S.T. 1001, T.I.A.S. 7840, reprinted in 39 Fed. Reg. 13308, effective January 1, 1974, and had outstanding a bilateral textile agreement with the Republic of Korea, T.I.A.S. 10611.

D. Promulgation of 19 C.F.R. 12.130, T.D. 84-171 and T.D. 85-38

As previously indicated, petitioner's merchandise was excluded from entry on

grounds that it lacked a textile quota visa from the Republic of Korea, as claimed to be required by 19 C.F.R. 12.130. The history of the promulgation of this regulation began on May 9, 1984, when President Reagan issued Exec. Order 12475, "Textile Implementation Program", 49 Fed. Reg. 19955, reprinted in [1984] U.S. Code Cong. & Ad. News B60 (App. 102a), under the authority of, inter alia, section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. 1854 (App. 86a). Exec. Order 12475 directed the Secretary of the Treasury, in accordance with policy guidance provided by the Committee for the Implementation of Textile Agreements (CITA), through its Chairman, to issue regulations governing the entry or withdrawal from warehouse for consumption of "textiles and textile products subject to Section 204 of the Act," including clarifications in, or revisions to, the country of origin rule for such textiles

and textile products in order to avoid circumvention of multilateral and bilateral textile agreements. Of interest is the fact that the Order contains no reference whatever to the CNMI or to the insular possessions of the United States.

In supposed conformity with this Executive Order, Customs included "insular possessions" in the definition of "country of origin" in both the interim regulation, T.D. 84-171, 49 Fed. Reg. 31248 (August 3, 1984) (App. 105a) and in the final regulation, T.D. 85-38, 50 Fed. Reg. 8710-8726 (March 5, 1985) (App. 105a note 2), which were eventually codified at 19 C.F.R. 12.130. The interim and final regulations do not differ materially in their wording as concerns the coverage of insular possessions. The relevant portion of the interim regulation, T.D. 84-171, under which peti-

tioner's merchandise was excluded from entry, provided:

> (a) Country of Origin. For the purpose of this section, textiles or textile products, subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C 1854), imported into the customs territory of the United States, are a product of a particular foreign territory or country or insular possession of the United States only if - * * *
>
> (2) In the case of an article which consists, in whole or in part, of materials which were the growth, product, or manufacture or were processed in another foreign territory or country, it has been substantially transformed by means of a substantial manufacturing or processing operation into a new and different article of commerce with a name, character, or use distinct from the article or material from which it was so transformed.

REASONS FOR GRANTING THE WRIT

This case raises fundamental and far-reaching questions as to the nature of the power, if any, of the Executive Branch to regulate commerce imported from insular

possessions of the United States. As we do not believe that section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), delegated any power to the President to regulate importations from the CNMI or, for that matter, from any insular possession of the United States, and further, as we do not believe that the President delegated any such power (assuming he might have it) to the agency involved, we believe that the inclusion of the CNMI within the ambit of the present regulation (19 C.F.R. 12.130) exceeds both the President's delegation to the agency involved and exceeds the power delegated to the President by Congress. Such regulation with respect to products from the CNMI is further in direct conflict with Article IV, Section 3, Clause 2 of the Constitution, which reserves the power to make rules and regulations respecting territories and

insular possessions to Congress. It is likewise contrary to the Congressional mandate for the treatment of products of insular possessions embodied in General Headnote 3(a) of the Tariff Schedules of the United States (TSUS), and specifically, to Congress's tariff treatment of products of the CNMI expressed in Section 603 of the Covenant between the United States and the CNMI.

I. The lower Courts have decided a federal question in a way in conflict with applicable decisions of this Court.

The Insular Possession Cases decided by this Court recognized that the power to legislate for our insular possessions in tariff matters is reserved for the Congress, and the President has no authority to impose duties on them. This principle is grounded upon the fact that the authority for United States actions with regard to its territories reposes solely in Congress pursuant to

Article IV, Section 3, Clause 2 of the Constitution, and not upon the Commerce clause, Article I, section 8, Clauses 1, 3, whether applied to domestic or foreign commerce.

DeLima v. Bidwell, 182 U.S. 1 (1901), involved the imposition of duties upon importations of sugar from Puerto Rico, after cession by Spain to the United States by the Treaty of Paris and after approval of the treaty by Congress. The Court held that the Collector of Customs at New York could not impose a duty upon imports from Puerto Rico, since it was not a "foreign country" within the meaning of the tariff laws, but a territory of the United States. Congress might otherwise provide, but until such was done, the power to impose duties was without the province of the Executive Branch. Id. at 198.

Dooley v. United States, 182 U.S. 222 (1901), presented the correlative propo-

sition, and is even more important in gauging the power of the President over possessions of the United States, when unsupported by a specific delegation from Congress. In Dooley duties had been levied, as a result of a Presidential order, upon importations into Puerto Rico, which levy continued after cession by Spain, and ratification of the treaty by Congress. The Court held that such duties could not be collected under this order on merchandise coming from the United States in the absence of Congressional action (182 U.S. at 236, emphasis supplied):

> Without questioning at all the original validity of the order imposing duties upon goods imported into Porto Rico from foreign countries, we think the proper construction of that order is that it ceased to apply to goods imported from the United States from the moment the United States ceased to be a foreign country with respect to Porto Rico, and that, until Congress otherwise constitutionally directed, such

> merchandise was entitled to free entry.
>
> ... [T]he authority of the President as Commander in Chief to exact duties upon imports from the United States ceased with the ratification of the treaty of peace, and her right to the free entry of goods from the ports of the United States continued until Congress should constitutionally legislate upon the subject.

In Downes v. Bidwell, 182 U.S. 244 (1901), the constitutionality of the Foraker Act (April 12, 1900, 31 Stat. at L. 77, ch. 191), by which Congress imposed duties at special rates upon the newly acquired possession of Puerto Rico, was challenged as contrary to Article I, Section 8 of the Constitution, declaring that "all duties, imposts, and excises shall be uniform throughout the United States." This argument was rejected by a majority of the justices, holding that Puerto Rico was a territory but not within the meaning of "United States," as used in

the revenue clause, and could be separately legislated for by Congress under the territorial clause. Mr. Justice Brown wrote (182 U.S. 267-68):

> That the power over the territories is vested in Congress without limitation, and that this power has been considered the foundation upon which the territorial governments rest, was also asserted by Chief Justice Marshall in M'Culloch v. Maryland, 4 Wheat. 316, 422,... and in United States v. Gratiot, 14 Pet. 526. ... So, too, in Church of Jesus Christ of L.D.S. v. United States, 136 U.S. 1,... in holding that Congress had power to repeal the charter of the church, Mr. Justice Bradley used the following forceful language: "The power of Congress over the territories of the United States is general and plenary, arising from and incident to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States...."

Further, neither the language nor the legislative history of section 204 of the Agricultural Act of 1956 evidences a

delegation of Congressional rulemaking power over insular possessions to the Executive. The Act specifically refers only to "foreign governments" or "countries", and nothing in section 204 of the Act, or its legislative history, is addressed to the Trust Territory of the Pacific Islands, which was in existence when the legislation was passed in 1956 and amended in 1962, nor to any insular possessions of the United States. The statute as enacted in 1956, Pub. L. 540, 70 Stat. 200, gave the President authority to negotiate with foreign governments to obtain certain import limiting agreements, including any involving textiles, and authorized the issuance of regulations regarding the entry or withdrawal of "any such" product: very clearly, any product covered by an agreement with a foreign government. See House Report (Agriculture Committee) No. 2077, [to

accompany H.R. 10875], 84th Cong., 2d Sess. 8-9 (1956).

The intent of the Act evident in its legislative history was to prevent the use by foreign countries of cheaply obtained U.S. surpluses, sold at prices on the world market below those available to U.S. manufacturers, for the purposes of exporting from those foreign countries products made therefrom. Id. The statute was then amended on June 19, 1962 by Pub. L. 87-488, 76 Stat. 104, to permit the President to issue regulations to make the provisions of any multilateral agreement negotiated thereunder "effective also against the small minority of . . . exporting countries which are not parties to the agreement." House Report (Agriculture Committee) No. 1511, [to accompany H.R. 10788], 87th Cong., 2d Sess., reprinted in [1962] U.S. Code Cong. & Ad. News 1714-15. The insular possessions and the Trust

Territory administered by the United States, including the CNMI, were clearly not contemplated, either by the original legislation or by the amendment, since they simply were not then, and are not now, territory "foreign" to the United States.[4]

Stairs v. Peaslee, 59 U.S. (18 How.)

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4. As the Insular Possession Cases, supra, clearly show and as do this Court's decisions in Stairs v. Peaslee, 59 U.S. (18 How.) 521 (1856), Faber v. United States, 221 U.S. 649 (1911), and Cincinnati Soap Company v. United States, 301 U.S. 308 (1937). Further, this point may be seen clearly from the status of Hong Kong at the time, which was included with the United Kingdom in the textile agreement negotiated between the U.S. and 18 other nations, which agreement provided the impetus for enacting Pub. L. 87-488. See House Report No. 1511, supra. Moreover, section 301 of the Tariff Act of 1930, ch. 497, 46 Stat. 590, as amended, which became, in essence, General Headnote 3(a), TSUS, and allowed 50% of the total value of products imported from Guam and other insular possessions to be made up of "foreign" materials, was in force when section 204 was originally enacted, and when it was amended.

521 (1856), involved an importation of cutch (a dyeing substance made only in India) from Halifax, Nova Scotia, to Boston, where the cutch was appraised, pursuant to act of Congress, according to its value in the principal markets of the "country" of exportation, which the Collector determined to be the prices at the time in London and Liverpool, Great Britain, rather than Calcutta, India. In upholding Customs' decision, Chief Justice Taney held for the Court (59 U.S. at 526):

> [T]he word "country" in the revenue laws of the United States has always been construed to embrace all the possessions of a foreign state, however widely separated, which are subject to the same supreme executive and legislative control. The question was brought before the Treasury Department in 1817; and on the 29th of September in that year, instructions were issued by the Department, in a circular addressed to the different Collectors, in which the construction above stated is given to the

> word. The practice of the government has ever since conformed to this construction; and it must be presumed that Congress, in its subsequent legislation on the subject, used the word according to its known and established interpretation.

The doctrine enunciated in Stairs was applied to exclude possessions of the United States from the term "country" in the construction of preferential tariff treatment accorded in a treaty with Cuba. In Faber v. United States, 221 U.S. 649 (1911), the Supreme Court held that as, in the absence of some qualifying phrase, the word "country" in the revenue laws of the United States embraced all its possessions, "other country" in the Cuban treaty did not include the Philippine Islands, which were then a

territory of the United States. Id. at 658-59.[5]

In Cincinnati Soap Company v. United States, 301 U.S. 308 (1937), this Court

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5. The status of the CNMI with respect to the United States, at least while the Trusteeship Agreement with the United Nations was still in effect, may be the subject of some doubt. The entire Trust Territory, as a strategic trust, was not technically a U.S. territory or possession but was often treated as such, the distinction being found immaterial in People of Saipan v. U.S. Dep't of Interior, 502 F.2d 90, 94-95 (9th Cir. 1974), cert. den., 420 U.S. 1003 (1975). However, there can be no doubt that the Covenant and the Trusteeship Agreement make the CNMI as much a part of the United States for tariff purposes as any other "insular possession". Indeed, were this not so, Customs would have had no reason whatever to exclude plaintiff's merchandise, since the CNMI is not specifically mentioned in 19 C.F.R. 12.130. When it is recalled that under section 105 of the Covenant, Congress would have to mention the CNMI in legislation which did not affect the States in order to make it applicable to it, this consideration indicates how much the CNMI is a part of the United States, and not another "country".

determined that even the passage of the Philippine Independence Act in 1934 did not suffice to make the Philippines a "foreign country", since the United States had (as is the case with the CNMI) retained many of the rights of sovereignty. The case involved a constitutional challenge to a law imposing a tax upon the first domestic (U.S.) processing of coconut oil, and provided that the tax collected on the processing of oil wholly of Philippine production should be set aside in the Treasury and remitted to the Philippine Government, to be spent for any purpose it desired, except subsidies to the producers of copra or coconut oil. The Supreme Court held that the tax was constitutional, finding that Congress' power to enact legislation for the benefit of the territories, to whom it owed at least a moral debt, combined with the taxing clause, sustained the legislation, and

further, that the passage of the Independence Act had not changed the status of the Philippines to a "foreign country" because (301 U.S. at 319-20, emphasis supplied):

> [T]he sovereignty of the United States has not been, and, for a long time, may not be, finally withdrawn. So far as the United States is concerned, the Philippine Islands are not yet foreign territory. By express provision of the Independence Act, we still retain powers with respect to our trade relations with the islands, . . . with respect to their financial operations and their currency; and we continue to control their foreign relations. The power of review by this court over Philippine cases, as now provided by law, is not only continued, but is extended to all cases involving the Constitution of the Commonwealth of the Philippine Islands.
>
> Thus, while the power of the United States has been modified, it has not been abolished. . . . The existence and character of the consequent obligations and the extent of the relief, if any, which should be afforded by the United States . . . are matters, not for judicial <u>but for Congressional consideration and determination.</u>

> It is not improbable that a failure to exercise control over imports from the Philippines would injuriously affect the industries of this country; and, on the other hand, an exercise of the power to tax imports might prove injurious to the people of the island. Congress, in passing the legislation here under consideration, is not forbidden to balance these respective probabilities.

Two essential points emerge from the foregoing discussion. First, the fact that "country" refers to all the possessions of a sovereign state "which are subject to the same supreme executive and legislative control" was recognized by this Court even in 1855, and had been adopted by the Treasury Department in 1817. As was made clear in the 1948 Trusteeship Agreement, and reiterated in the Covenant between the CNMI and the United States, both the Trust Territory and the CNMI are not "foreign countries" nor "countries" within the meaning of the tariff legislation of the United States, including

section 204. In Cincinnati Soap, moreover, the Philippines were achieving independence, yet were not treated as a "foreign country" because the United States continued to maintain the indicia of international sovereignty over them. In the case of the CNMI, their tariff status has been defined by Congress as comparable to that of Guam (an insular possession). They are, in fact, not only not "foreign", they are "in political union with the United States". Second, and perhaps most important, Cincinnati Soap makes clear that the treatment of such territory from a customs and revenue standpoint, is within the province of Congress. Once Congress has acted, it is not within the power of the Executive, absent a clear delegation of such power, to chip away at the balance which Congress has struck.

The regulation in question, 19 C.F.R. 12.130, purports to define when a textile

product "subject to section 204, Agricultural Act of 1956, as amended," may be considered a "product" of a foreign territory or country or insular possession. In the case of a textile or textile product consisting of materials produced or derived from or processed in more than one foreign territory or country or insular possession, it requires a "substantial transformation," excluding mere "assembly," such that a "new and different article of commerce" is created thereby. This new regulation clearly alters the established requirement contained in General Headnote 3(a), its legislative history and long-standing administrative interpretations thereof, which require only that an article undergo "substantial processing" operations -- which may include assembly -- in the insular possession amounting to at least 30% of its total value (50%

in certain cases) to be considered a product thereof and thus exempt from duty.

The Court of International Trade, whose opinion was adopted by the Federal Circuit, did not find the regulation to be an unlawful exercise of Executive authority, circularly reasoning that the "merchandise was excluded because it was determined to be a product of Korea, not the CNMI." 632 F. Supp. at 47 (App. 23a-27a).

The Court also rejected petitioner's contention that Congress limited its delegation of authority to the President under section 204 to products of "countries" for textile restraint purposes, excluding from such restraints products from insular possessions subject to duty-free treatment under General Headnote 3(a), stating:

> It is not impermissible for section 12.130(b), defining products for purposes of quantitative restraints on textiles, to affect products imported from insular possessions.
>
> In effect, the country of origin of the merchandise was Korea for textile restraint purposes, and may have been the CNMI for duty and marking purposes. This situation may be awkward, but there is no violation of General Headnote 3(a).

Id. at 47 (citations and footnotes omitted) (App. 28a-29a).

The Court's logic here is inherently flawed. The Court began by assuming the wrong conclusion (that petitioner's sweaters are products of Korea) and reasoned backwards that therefore the President or his delegates are not impermissibly and unconstitutionally regulating products of insular possessions because petitioner's merchandise is that of Korea. Logically, the Court should have determined the validity, first, of Customs' application of its newly

promulgated definition of "country of origin" to products which were shipped from the CMNI and which were entitled to treatment under General Headnote 3(a), TSUS, as products of the CNMI. Thus, it was fallacious to say that the subject sweaters were excluded because they were products of Korea (rather than the CNMI), just as it was fallacious to accept the de facto administrative repeal of General Headnote 3(a) by saying that a product may have one country of origin for duty purposes and another country of origin for texitle restraint purposes, not only without any prior example of such a situation in Customs law, but also without any consideration of legislative intent. The lower courts ignored the practical effect of this new regulation to deny duty-free treatment, bestowed by Congress, to merchandise which qualified statutorily as products of the CNMI.

We submit that the effect of 19 C.F.R. 12.130 is to contravene the tariff laws, the Constitution of the United States, and the letter and spirit of the Trusteeship Agreement and Covenant with the peoples of the Northern Marianas. The regulation cannot properly be applied to products of the CNMI (or other insular possessions) absent Congressional action, and, therefore, Customs' exclusion of the merchandise at issue was an ulta vires act. The lower courts effectively overlooked the important Constitutional and statutory questions presented in this litigation, and rendered judgments in conflict with applicable decisions of this Court. This Court should issue a writ of certiorari.

II. The lower courts have decided an important question of federal law which has not been, but should be, settled by this Court.

This is a case of first impression, the specific issues of which, to our knowledge, have not been presented for resolution to this Court. This case hinges upon the question of whether the Executive Branch may lawfully promulgate regulations under 7 U.S.C. 1854 which alter the tariff status of imports from insular possessions from that prescribed by Congress in General Headnote 3(a), TSUS. The resolution of this issue necessarily impacts upon our Government's relations with, and its moral and legal obligations to, the citizens of our insular possessions and the CNMI, their economies and future commercial development, as well as the business entities who may have located commercial establishments and facilities in these possessions in

reliance on the tariff treatment heretofore given importations therefrom, and business entities, such as petitioner, who entered into commercial relations in reliance on such tariff treatment. The CIT decision herein, summarily affirmed by the CAFC without opinion, unfortunately stands as the only precedent in the matter and thus affects the insular possessions, including the CNMI, and their economies, in a way which, petitioner submits, is not only negative but completely at odds with the Federal treatment of such possessions envisioned by the framers of the Constitution and legislated by Congress. The decisions also sanction the usurpation of Congressional authority by the Executive Branch in matters pertaining to territories and possessions under the guise of regulating "foreign" commerce, which could potentially be extended to the numerous other agricultural

commodities covered under section 204.

The CIT, petitioner submits, erroneously followed dicta in the case of United States v. Patel, 762 F. 2d 784 (9th Cir. 1985), to hold that General Headnote 3(a) provides only for the duty-treatment of certain articles imported from the insular possessions and does not apply to quotas (632 F. Supp. at 44-46) (App. 12a-23a). Patel is clearly distinguishable since the defendant in that suit for fraud (762 F. 2d at 794):

> ...did not purport to satisfy the requirements for importing coffee from either Honduras or Guam. Rather, the coffee was imported as processed agricultural beans, so it made no difference whether the coffee was a product of Guam or a product of Honduras.

Thus, the Patel court did not decide whether General Headnote 3(a) defined the merchan-

dise before it as a product of Guam, an insular possession.

In this case, there is no doubt that before the promulgation of 19 C.F.R. 12.130, petitioner's merchandise was considered, pursuant to General Headnote 3(a) and to binding Customs rulings interpreting the same (App. 42a), as a product of the CNMI, and therefore admissable free of duty and not subject to quotas negotiated or set by the President and his delegates under section 204 of the Agricultural Act of 1956, 7 U.S.C. 1854, which were in full force and effect all during the period in question.

The courts below were, therefore, faced with a question which the Patel case did not, and was not intended to, resolve: Whether Customs can change the definition of what is a product of the CNMI, making products which Congress clearly intended to be such into the products of a foreign

nation. On this question, the CIT held (632 F. Supp. at 46) (App. 21a-22a):

> Congress has never specified how merchandise is to be defined as a growth, product or manufacture of an insular possession [Footnote omitted]. Congress presumably left definition of these terms to the Executive Branch.

This holding misreads General Headnote 3(a) and its legislative history, and also ignores the doctrine of Congressional adoption and ratification of administrative interpretations stated succintly by the Customs Court, in construing General Headnote 3(a), in Delaware Watch Co., Inc. v. United States, 64 Cust. Ct. 659, 666, 311 F. Supp. 1320, 1325 (1970) (relying on this Court's decisions in Taft v. Commissioner of Internal Revenue, 304 U.S. 351, 357 (1938), United States v. Safety Car Heating & Lighting Co., 297 U.S. 88, 95, reh. den., 297 U.S. 727 (1936), and McFeely v. Commissioner, 296

U.S. 102, 110, reh. den., 296 U.S. 664 (19-35)).

Both the language of General Headnote 3(a) and its legislative history, from its enactment to date, clearly demonstrate that Congress was aware of the definition of what constituted a product of the insular possessions as developed by administrative agencies; was distinctly aware that it did not require "substantial transformation," the new test formulated in 19 C.F.R. 12.130; was satisfied with it as a general matter; and adopted it in order to confer special benefits upon the insular possessions which it intended not be available to the products of any foreign country. Such purpose, of course, comports completely with the fact that the insular possessions and the CNMI are not countries, foreign or otherwise, but are part of the United States, legislated for directly by Congress. Only a few

examples from the legislative history of General Headnote 3(a) suffice to demonstrate these points.

The U.S. Tariff Commission, Tariff Classification Study, Submitting Report (1960), stated, in commenting upon General Headnote 3(a), enacted as part of the Tariff Schedules of the United States by the Tariff Classification Act of 1962, Pub. L. 87-456, 76 Stat. 72[6] (at 17, emphasis supplied):

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6. General Headnote 3(a) did not at that time contain the exceptions which now occur at the beginning of subsection 3(a)(i), nor the special provision for 50% value added applicable only to articles described in section 213(b) of the Caribbean Basin Economic Recovery Act (CBERA), Pub. L. 98-67, Title II, 97 Stat. 384 (1983), nor did it contain present subsections (iii) and (iv), which were added by virtue of the Trade Act of 1974, § 502(d), Pub. L. 93-816, 88 Stat. 1978, January 3, 1975, and CBERA, respectively.

> General headnotes 3 and 4 prescribe the conditions obtaining with respect to the "Rates of duty" columns numbered 1 and 2 in the proposed revised schedules. In so doing, general headnote 3 covers the substance of the special treatment presently accorded to products of insular possession [sic] (under par. 301 of the Tariff Act of 1930, as amended), products of Cuba (under sec. 350 of the Tariff Act of 1930, as amended), products of the Philippine Republic (under the Philippine Trade Agreement Revision Act of 1955), and products of certain Communist countries (under sec. 5 of the Trade Agreements Extension Act of 1951, as amended).

The CIT quoted this legislative history in part, emphasizing the words "Rates of duty" in the first sentence. 632 F. Supp. at 44 (App. 12a-13a). It thereby seemed to imply that the portion emphasized above, "the substance of the special treatment accorded to products of insular possession", relates only to "rates of duty". This assertion begs the question, since, in fact, at the time of drafting and of enactment, no

products of insular possessions were subject to quotas. Therefore, neither Congress nor the Tariff Commission would have found it necessary to cover them in restating the "special treatment" accorded to insular possessions.

Imposition of quotas by Congress was one of the very first amendments made to General Headnote 3(a), in Pub. L. 89-805, 80 Stat. 1521, November 10, 1966, reprinted in [1966] U.S. Code Cong. & Ad. News 1756. The legislation established a quota for the duty-free importation of timepieces from the insular possessions, even if they met the provisions of General Headnote 3(a), and allocated such quota among the possessions. After the quota was reached, the articles

were to pay duty, but could still be entered.[7]

The Ninth Circuit in Patel, after correctly stating the general rule of construction of tariff statutes that all parts of the statute are to be read together (762 F. 2d at 784), went on to state: "Reading 19 U.S.C. §1202 as a whole, we can find absolutely no reference to quotas in any part of the statute, including the headnotes and rules of interpretation." Id. at 791.

This statement is simply wrong. It was acknowledged by the CIT to be an apparent oversight, but stated to be one not vitiating the broad brush treatment of General Headnote 3(a) sanctioned by the Ninth Circuit

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7. Significantly, Congress also delegated authority to the Secretaries of the Interior and of Commerce jointly to allocate quotas among producers of timepieces located in each of the insular possessions on a fair and equitable basis. Pub. L. 89-805, § (d).

and adopted by the courts below. 632 F. Supp. at 44 (App. 14a-15a). The Court of International Trade continued: "But the fact that Congress has enacted quotas with respect to one kind of merchandise hardly argues that it has not delegated to executive branch authority to adopt other country of origin rules for non duty purposes." Id. at 46 (App. 23a). Such a reading of General Headnote 3(a) violates one of the cardinal principles of statutory construction: Expressio unius est exclusio alterius. If Congress had intended that quotas be applied to textile products from the insular possessions under section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. 1854, it could easily have said so.

The legislative history of the timepieces legislation, Pub. L. 89-805, Senate Report (Finance Committee) No. 1679, [to accompany H.R. 8436], 89th Cong., 2d Sess.,

reprinted in [1966] U.S. Code Cong. & Ad. News 4389, 4390, more fully explains (emphasis supplied):

> **A. Background.** - Under paragraph (a) of general headnote 3 of the TSUS articles, the growth or product of a U.S. insular possession outside the customs territory of the United States, are free of duty when imported into the U.S. customs territory if they do not contain foreign materials to the value of more than 50 percent of their total value. This duty-free rule for the possessions was enacted in 1954 (sec. 401 of Public Law 83-768, the Customs Simplification Act of 1954). Prior to this amendment, all products of Guam and American Samoa were duty free whereas products of the U.S. Virgin Islands were subject to duty if they contained over 20 percent of foreign material.
>
> The 1954 statute not only provided uniformity of treatment among the possessions but it was calculated to, and in effect has, stimulated the development of light industry in the possessions. The development of light industry has helped the economy of the possessions, particularly the Virgin Islands, where numerous new businesses have been established to produce or assemble various articles

> for duty-free shipment to the United States.

The Report, after equating the words "produce or assemble," then provides a list which covers over forty different types of articles qualifying for duty-free treatment, and reviews the processing, including mere assembly, to which they were subjected. Id. at 4390-91. It makes clear that the watches in question were not made in the insular possessions but assembled from parts and subassemblies obtained principally from Japan, West Germany, and France, yet this processing was sufficient to render them "products" of the insular possessions under General Headnote 3(a). Id. at 4392.

Thus, when the CIT stated that Congress has never specified how merchandise is to be defined as a product of an insular possession, 632 F. Supp. at 46 (App. 21a), it ignored the fact that Congress had reviewed,

in 1966, the applicable definitions being administratively employed (including a long list of specific products) and knew that "substantial transformation" was not being required. Moreover, Congress stated itself well-satisfied, in general, with the interpretation of substantial processing, which was intended to, and had, fostered the growth of light industry in the insular possessions. Since the interpretation was creating problems with watches, Congress legislated specifically for them, enacting a quota for watches assembled in the insular possessions and imported as products thereof under General Headnote 3(a). It responded to a specific problem with a specific solution, intended to be fair to all the insular possessions and not to destroy the light industries which had grown up there under just the interpretation of General Headnote 3(a)

and its predecessor provision which Congress has sought to foster.

Exactly the same method of tariff making, Congress enacting a specific solution to a specific problem, is evidenced by Pub. L. 89-806, § 2, 80 Stat. 1523, November 10, 1966, reprinted in [1966] U. S. Code Cong. & Ad. News 1758, which made buttons made in the insular possessions dutiable under certain circumstances by providing another exception placed at the beginning of General Headnote 3(a), TSUS, "Except as provided in headnote 4 of subpart A of part 7 of schedule 7" and enacting the following headnote, still to be found in the TSUS:[8]

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8. Redesignated Headnote 3 of Part 7A, Schedule 7, in the present TSUS (1987).

> 4. Buttons (whether finished or not finished) provided for in item 745.32 which are the product of an insular possession of the United States outside the customs territory of the United States and which are manufactured or produced from button blanks or unfinished buttons which were the product of any foreign country shall be subject to duty under item 745.32 at the rate which applies to products of such foreign country.

This provision makes buttons, the products of insular possessions, dutiable at the rates provided for the foreign countries whence the unfinished buttons or button blanks, from which they were made, originated. Senate Report (Finance Committee) No. 1600, [To accompany H.R. 11216], 89th Cong., 2d Sess., reprinted in [1966] U.S. Code Cong. & Ad. News 4398, 4401-4402, makes clear how these buttons, the product of insular possession were made. Polyester or acrylic buttons from foreign countries were imported into the possessions, were drilled, and polished,

and sent on to the United States. Congress had acted the year before to raise the rate on button blanks imported directly into the United States to the rate for finished buttons, to prevent this sort of production within the Customs territory of the United States from avoiding the high duty on finished buttons. The Report makes clear that the Customs Service had ruled that the processing operations in the possessions sufficed, in its opinion, to make the finished buttons the product of the insular possessions.

It was in this context that Congress stated the general rule quoted in part by the CIT below (632 F. Supp. at 45) (App. 19a):

> However, we failed to recognize the peculiar advantage afforded by our tariff law to operations conducted in the insular possessions. This advantage consists of duty-free treatment for articles coming from the insular possessions if they meet two simple tests. First, the article arriving from the possession must have a value at least double the value of the foreign materials contained in it. Second, it must have been subjected to some manufacturing or processing operation in the possession. (Emphasis supplied.)

Clearly, the button blanks had not been "substantially transformed" but had been subject to "some processing." Yet Congress did not state that such operations did not qualify the finished buttons as products of an insular possession. On the contrary, the statute specifically recognized the buttons as the products of the insular possessions, but merely made them dutiable, forming thereby a discrete exception to the usual treatment of products of insular possessions. Moreover, the passage, in context, makes clear

the Congressional adoption of Customs' understanding of Congress's meaning and intent in using the word "product" in the General Headnote to give a special and peculiar advantage to the insular possessions.

Thus, the legislative history of General Headnote 3(a) demonstrates that, contrary to the opinion of the courts below, the headnote provides a country of origin rule which was intended to permit articles meeting it, including textile articles otherwise subject to textile agreements, to be considered products of the insular possessions, not products of countries where some of their foreign components originated, and thus eligible for favored tariff treatment. As regards textile products, Congress has provided that the 50 percent rule for determination of origin, and thus duty-free treatment, suffices to prevent pass-through abuses, the very point which the Executive here

claims as the basis for the application of 19 C.F.R. 12.130 to the insular possessions. As demonstrated by the foregoing, application of this regulation to products of the CNMI is clearly unwarranted, yet was approved by the courts below. This Court's review is necessary to clarify and correct the constitutional, legal and policy issues involved in this litigation.

CONCLUSION

The subject regulation, 19 C.F.R. 12.130, is an unlawful exercise of Executive authority as applied to products of insular possessions. In upholding the exclusion of petitioner's merchandise under the regulation, the lower courts have ignored earlier teachings of this Court, and have disregarded the meaning and intent of General Headnote 3(a), of 7 U.S.C. 1854, and of the Constitutional authority reserved to the

Congress to make rules and regulations regarding insular possessions. Further, the lower court decisions impact adversely upon our moral and legal obligations to the CNMI, and our insular possessions in general. Resolution of the issues raised in this petition by this Court is imperative.

Respectfully submitted,

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February 13, 1987

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

YURI FASHIONS CO., LTD.,	)	
	)	
Appellant,	)	
	)	Appeal No. 86-1126
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Appellee.	)	

Andrew P. Vance, Barnes, Richardson & Colburn, of New York, New York, argued for appellant. With him on the brief was Michael A. Johnson.

Velta A. Melnbrencis, Commercial Litigation Branch, Department of Justice, of Washington, D. C., argued for appellee. With her on the brief were Richard K. Willard, Assistant Attorney General and David M. Cohen, Director.

Appealed from: U.S. Court of International Trade

Judge DiCarlo

DECIDED: November 18, 1986

Before SMITH, Circuit Judge, BENNETT, Senior Circuit Judge, and NEWMAN, Circuit Judge.

NEWMAN, Circuit Judge.

Yuri Fashions Co., Ltd., appeals the judgment of the United States Court of International Trade, Judge DiCarlo presiding, holding that appellant's merchandise was properly excluded from entry. Yuri Fashions Co. v. United States, 632 F. Supp. 41 (Ct. Int'l Trade 1986). The judgment is affirmed on the basis of Judge DiCarlo's opinion.

AFFIRMED

SLIP OP. 86-33

UNITED STATES COURT OF INTERNATIONAL TRADE

YURI FASHIONS CO., LTD.,	:	
Plaintiff,	:	
v.	:	BEFORE: DiCARLO, JUDGE
THE UNITED STATES,	:	
Defendant,	:	Court No. 84-12-01807
and	:	
AMERICAN FIBER/TEXTILE/ APPAREL COALITION,	:	
Defendant-Intervenor.	:	

Plaintiff challenges exclusion of merchandise imported from the Commonwealth of the Northern Mariana Islands (CNMI), an insular possession of the United States. Applying 19 C.F.R. § 12.130(b), a regulation issued pursuant to the President's authority to regulate textile imports, the Customs Service determined the country of origin of the merchandise was Korea and excluded the merchandise because it was not accompanied by export visas from Korea. Plaintiff says the merchandise is a product of the CNMI pursuant to General Headnote 3(a) of the

Tariff Schedules of the United States, and that section 12.130(b) is ultra vires as applied to its merchandise. Plaintiff also seeks a declaratory judgment that (1) section 12.130 is invalid as applied to products of the CNMI and (2) a directive by the Chairman of the Committee for the Implementation of Textile Agreements (CITA) excluding some products imported from the CNMI from the application of section 12.130 is ultra vires.

Held: General Headnote 3(a) expressly speaks only to the rates of duty for articles imported into the United States from insular possessions. Congress has not limited its delegation of authority to the President to define products of "countries" for textile restraint purposes to exclude from such restraints imports from insular possessions. Plaintiff lacks standing to seek a declaratory judgment (1) that the regulation is invalid as applied to products of the CNMI, since plaintiff's merchandise is a product of Korea, and (2) that the CITA directive is ultra vires, since plaintiff fails to allege any facts indicating that it is adversely affected or aggrieved by the directive.

[Defendant's cross-motion for summary judgment granted.]

Decided: March 24, 1986

Barnes, Richardson & Colburn (Andrew P. Vance and Michael A. Johnson) for plaintiff.

Donald C. Woodworth for amicus curiae Commonwealth of the Northern Mariana Islands.

Richard K. Willard, Assistant Attorney General, David M. Cohen, Director, Commercial Litigation Branch, Civil Division, Department of Justice (Velta A. Melnbrencis) for defendant.

Miller & Chevalier, Chartered (Donald Harrison) for defendant-intervenor.

Memorandum, Opinion and Order

DiCARLO, JUDGE: Plaintiff challenges the exclusion of sweaters imported from the Commonwealth of Northern Mariana Islands (CNMI) and seeks a declaratory judgment that a regulation, 19 C.F.R. §12.130(b) (1985),[1]

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1. 19 C.F.R. § 12.130 was published as an interim regulation by T.D. 84-171, 49 Fed. Reg. 31248 (August, 3, 1984) and as a final regulation by T.D. 85-38, 50 Fed. Reg. 8710 (March 5, 1985). Plaintiff's merchandise was excluded by virtue of the interim regulation. Since plaintiff's merchandise would also be excluded under the final regulation, which differs, with

defining textile products of insular possessions of the United States for purposes of quota restraints, is ultra vires and void.

Plaintiff's merchandise was denied entry on the grounds it was not accompanied by export visas from the Republic of Korea (Korea), which the United States Customs Service (Customs) maintained was the country of origin of the merchandise, pursuant to 19 C.F.R. § 12.130(b). Plaintiff says its merchandise is a product of the CNMI for all purposes, pursuant to General Headnote 3(a) of the Tariff Schedules of the United States (TSUS), and cannot be excluded from entry as a product of Korea by virtue of 19 C.F.R. § 12.130(b). Plaintiff also argues that

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(cont.)
respect to insular possessions, from the interim regulation only in form, the Court considers the final regulation. See infra, note 3.

regulation is ultra vires as applied to the CNMI.

Plaintiff alleges jurisdiction pursuant to 28 U.S.C. §§ 1581(a)[2] and 1581(i)(3) (1982), and seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 (1982) and Rule 57 of the Rules of this Court.

The American Fiber/Textile/Apparel Coalition, a coalition of twenty-one American trade associations and unions whose members are involved in production of textiles and textile products, was granted leave to intervene as a party defendant in that part of this action brought under 28

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2. Plaintiff protested the exclusion of its merchandise and demanded action on the protest within 30 days pursuant to 19 C.F.R. § 174.21(b) (1984). Plaintiff brought the action under 19 U.S.C. § 1515(b) (1982) and 28 U.S.C. § 1581(a) when no action was taken, and the protest deemed denied, after 30 days.

U.S.C. § 1581(i).[3] The CNMI, through its Resident Representative to the United States, was granted leave to appear as amicus curiae.

Plaintiff moves, and defendant cross-moves, for summary judgment. The parties agree that no issues of material fact are disputed.

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3. 28 U.S.C. § 2631(j)(1)(A) (1982) provides that

> Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that --
>
> > no person may intervene in a civil action under section 515 . . . of the Tariff Act of 1930 . . . .
>
> Thus intervention is not permitted where the Court has jurisdiction under 28 U.S.C. § 1581(a) over a cause of action to contest the denial of a protest under 19 U.S.C. § 1515.

The Court holds that 19 C.F.R. § 12.130(b) does not conflict with General Headnote 3(a).

I. The Exclusion of Plaintiff's Merchandise

In November, 1984 plaintiff attempted to enter a shipment of sweaters processed in the CNMI from components made in Korea. The merchandise was accompanied by a completed Customs Form 3229, certifying that more than fifty percent of the total value of the merchandise was added by materials made and labor performed in the CNMI. Applying 19 C.F.R. § 12.130, Customs determined that the country of origin of the

sweaters was Korea.[4] Since the merchandise was not accompanied by export visas from

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4. 19 C.F.R. § 12.130 changed the country of origin requirements for textiles and textile products subject to quantitative restraints. In order for a textile product manufactured in two countries to have the second country as its country of origin for quota purposes, the product must undergo "substantial transformation" in the second century. Section 12.130(b) states in part:

> For the purpose of this section . . . a textile or textile product, subject to section 204, Agricultural Act of 1956, as amended, imported into the customs territory of the United States, shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly the growth, product, or manufacture of that foreign territory or country, or insular possession. However . . . a textile or textile product, subject to section 204, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession where it last underwent a substantial transformation. A

Korea, the merchandise was refused entry.

Plaintiff contends that General Headnote 3(a), TSUS, precludes application of 19 C.F.R. § 12.130 to its merchandise. Plaintiff says that its merchandise is a "product or manufacture" of the CNMI under General Headnote 3(a) for all purposes, and may not have another country as its country of origin for textile restraint purposes unless so provided for by act of Congress. The Court disagrees.

(cont.)

> textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

See Mast Industries, Inc. v. Regan, 8 CIT ___, 596 F. Supp. 1567 (1984) (upholding section 12.130 as within the authority delegated to the President under section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. § 1854 (1982)).

A. General Headnote 3(a)

By its terms, General Headnote 3(a)[5] regulates only the duty paid on imports

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5. At the time of the attempted entry, in 1984, General Headnote 3(a) provided, in part:

> Rates of Duty
>
> (a) Products of Insular Possessions.
>
> (i) Except as provided in headnote 6 of schedule 7, part 2, subpart E, and except as provided in headnote 3 of schedule 7, part 7, subpart A, articles imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value (or more than 70

from insular possessions, such as the CNMI. The headnote is captioned "Rates of Duty" and it expressly speaks only to the "rates of duty" for articles imported into the customs territory of the United States.

The Court agrees with the recent holding of the Court of Appeals for the Ninth Circuit that nothing in the headnote addresses quota or other restrictions:

(cont.)

> percent of their total value with respect to watches and watch movements), coming to the customs territory of the United States directly from any such possession, and all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty [emphasis added].

> Headnote 3(a) applies solely to tariffs and duties. . . . [A]fter examining the common meanings of the words "duty" and "quota," we conclude that "duty" cannot be read to encompass "quota" . . . . Consequently we hold that that Headnote 3(a) does not apply to quotas, and therefore, that it did not preempt the quota restrictions imposed [on the imported merchandise].

United States v. Patel, 762 F.2d 784, 790-91, (9th Cir. 1985). Plaintiff says that Patel, in which fraudulent violation of import laws was alleged, turned on very different facts than this case, and that the Ninth Circuit apparently overlooked headnote 6 of schedule 7, part 2, subpart E (setting a quota on timepieces imported from insular possessions), when the Court said that it "can find absolutely no reference to quotas in any part" of the TSUS. 762 F.2d at 791. But neither of these observations provide a reason why the Patel

Court's interpretation of General Headnote 3(a) should not be followed.

The Court also disagrees with plaintiff's argument that the legislative history of General Headnote 3(a) indicates that Congress intended that provision to define the country of origin of merchandise imported from insular possessions for all purposes.

A tariff preference for goods from all insular possessions of the United States was first enacted as part of the Customs Simplification Act of 1954, Pub. L. 768, 68 Stat. 1136, 1139, § 401 (enacted as section 301 of the Tariff Act of 1930), which stated in pertinent part:

> There shall be levied, collected, and paid upon all articles coming into the United States from any of its insular possessions . . . the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries; except that all articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the United States, or of both, which do not contain foreign materials to the value or more than 50 per centum of their total value . . . shall be admitted free of duty upon compliance with such regulations as to proof of origin as many be prescribed by the Secretary of the Treasury [emphasis added].

According to its legislative history, this provision was intended to

> provide for the duty status of importations from the insular possessions of the United States. The new section would provide that all articles imported from an insular possesion of the United States . . . shall be dutiable at the same rates as are importations from foreign countries, except those which (1) are entirely of native origin or (2) are manufactured in such possession and do

> not contain over 50 percent of foreign materials . . . .

S. Rep. No. 2326, 83rd Cong., 2d Sess. (1954) reprinted in, 1954 U.S. Code Cong. & Ad. News 3, 3900, 3905 (emphasis added).

General Headnote 3(a) was enacted as part of the Tariff Schedules of the United States in 1962, by the Tariff Classification Act of 1962, Public Law 87-456, 76 Stat. 72. The Tariff Classification Study published by the Tariff Commission stated that:

> General headnotes 3 and 4 prescribe the conditions obtaining with respect to the "Rates of duty" columns numbered 1 and 2 in the proposed revised schedules. In doing so, general headnote 3 covers the substance of the special treatment presently accorded to products of insular possession (under par. 301 of the Tariff Act of 1930, as amended) . . . .

Submitting Report, Vol. 1, p. 17 (emphasis

added).[6]

In 1966, Congress considered the tariff status of products of insular possessions in enacting headnotes to Schedule 7 of the TSUS to establish quotas on importation of timepieces and a special country of origin rule for buttons from insular possessions. The legislative history of Pub. L. 89-805, providing for the timepiece quota, states, in part:

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6. The Tariff Classification Study is considered an important source of legislative history of the Tariff Schedules. United States v. Andrew Fisher Cycle Co., 57 CCPA 102, 106-07, C.A.D. 986, 426 F.2d 1308, 1311 (1970); see 2 R. Strum, Customs Law and Administration, § 52.2, 10-13 (1985) (citing cases).

> Under paragraph (a) of general headnote 3 of the TSUS articles, the growth or product of a U.S. insular possession outside the customs territory of the United States, are free of duty when imported into the U.S. customs territory if they do not contain foreign materials to the value of more than 50 percent of their total value.

S. Rep. 1679, 89th Cong., 2d Sess. (1966), reprinted in, 1966 U.S. Code Cong. & Ad. News 4389, 4390 (emphasis added). The legislative history of Pub. L. 89-806, providing for the country of origin rule for buttons, describes General Headnote 3(a) as providing an "advantage" for goods from insular possessions.

> This advantage consists of duty-free treatment for articles coming from the insular possession if they meet two simple tests. First, the article arriving from the possession must have a value at least double the value of the foreign materials contained in it. Second, it must have been subjected to some manufacturing or processing operation in the possession.

S. Rep. 1600, 89th Cong., 2d Sess. (1966), reprinted in 1966 U.S. Code Cong. & Ad. News 4398, 4401 (emphasis added).[7]

From the legislative history of General Headnote 3(a), the Court draws two conclusions. First, nothing in the legislative history of General Headnote 3(a) known to the Court indicates that the headnote was intended to regulate anything other than rate of duty. See Patel, supra. Second, the legislative history indicates

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7. Congress also amended General Headnote 3(a) in 1974 and 1983 to implement the Generalized System of Preferences and the Carribean Basin Initiative, respectively. The Trade Act of 1974, Pub. L. 98-618, 88 Stat. 1978, § 502; Caribbean Basin Economic Recovery Act, Pub. L. 98-67, 97 Stat. 392, § 214(a)(1)(B). Both enactments altered the foreign content permissible with respect to duty-free entry of goods from insular possessions. Neither enactment is accompanied by any indication that Congress created or approved any particular administrative test for "product" of an insular possession.

that Congress intended that General Headnote 3(a) grant duty-free treatment to merchandise which (1) is a growth, product or manufacture of an insular possesion and (2) satisfies a specified percentage of its valued derived from the insular possession. Congress has never specified how merchandise is to be defined as a growth, product or manufacture of an insular possession.[8]

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8. Amicus curiae argues that General Headnote 3(a) establishes a single "value added" test, referring to legislative history of the Tariff Act of 1909, Ch. 6, 35 Stat. 11, § 5 (1909), and the Tariff Act of 1930, Ch. 497, 46 Stat. 590, § 301 (1930), which provided for duty-free treatment for imports from the Philippine Islands.

The two-prong test was established in the Customs Simplification Act of 1954, the first legislation to permit duty-free entry of imports from the CNMI. As Customs Ruling CLA-2 CO:R:CV:G 553239 PR, issued to plaintiff after promulgation of 19 C.F.R. § 12.130, recognizes, Customs had an established and uniform practice of defining "products" of insular possessions, a requirement that was

Congress presumably left definition of these terms to the Executive branch.

Plaintiff points to the quotas Congress enacted on timepieces imported from insular possessions, apparently to argue that Congress has reserved for itself authority

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additional to the value added test. In a previous ruling, Customs described that practice as follows:

> Whether an article is a "product" of an insular possession within the meaning of General Headnote 3(a), TSUS, depends upon whether substantial processing operations are performed in the insular possession. Customs has consistently ruled that Headnote 3(a) requires more than merely "some processing." Articles imported into the insular possession must undergo extensive operations to satisfy the requirement that the merchandise be the growth or production of the possession.

On August 2, 1985 Customs proposed a change in this established and uniform practice in order to conform the definition of product under General Headnote 3(a) with the country of origin rule of section 12.130(b). 50 Fed. Reg. 3193.

to enact quotas on merchandise which met the rule of origin stated in General Headnote 3(a). But the fact that Congress has enacted quotas with respect to one kind of merchandise hardly argues that it has not delegated to executive branch authority to adopt other country of origin rules for non-duty purposes.

B. 19 C.F.R. § 12.130 and the CNMI

Plaintiff and amicus curiae argue at length that Customs had no authority to exclude products imported from the CNMI under 19 C.F.R. §12.130 since (1) the source of executive power to regulate textile imports is section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. §1854

(1982),[9] (2) that statute grants the President authority to issue regulations governing importation of products of "countries", and (3) the CNMI is not a

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9. Section 204 states in part:

> The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any agricultural commodity or product manufactured therefrom or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carry out any such agreement. In addition, if a multilateral agreement has been or shall be concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement [emphasis added].

country, but an insular possession in commonwealth status with the United States.[10]

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10. Since 1947 the United States has administered the Northern Mariana Islands as part of the Trust Territory of the Pacific Islands under a United Nations Trusteeship Agreement. Trusteeship Agreement for the Former Japanese Mandated Islands, 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189. Under the Trusteeship Agreement, Art. 3, the United States, as Administering Authority has:

> full powers of administration, legislation, and jurisdiction over the Territory subject to the provisions of this Agreement, and may apply to the Trust Territory, subject to any modification which the Administering Authority may consider desirable, such of the laws of the United States as it may deem appropriate to local conditions and requirements.

Article 8, § 4, of the Trusteeship Agreement gave the United States power to negotiate and conclude treaties and agreements with other nations on behalf of the CNMI.

The Covenant to Establish a Commonwealth of the Northern Mariana

But, plaintiff's merchandise was excluded because it was determined to be a product of Korea, not the CNMI. The President has been delegated broad authority under section 204 to negotiate textile restraint agreements with other nations, and to order the promulgation of regulations to carry out such agreements. See American Association of Exporters and Importers--Textile and Apparel Group v. United States, 751 F.2d 1239 (Fed. Cir. 1985). Pursuant to this authority, the United States entered

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Islands in Political Union with the United States, Pub. L. 94-241, 90 Stat. 263, (1976) printed at 48 U.S.C. § 1681, note (1982), was approved by act of Congress on March 24, 1976. Article 1, section 101 of the Covenant, provides: "The Northern Mariana Islands upon termination of the Trusteeship Agreement will become a self-governing commonwealth to be known as the 'Commonwealth of the Northern Mariana Islands', in political union with and under the sovereignty of the United States of America."

into an agreement with Korea limiting imports of textile products from that country into the United States, and the President ordered 19 C.F.R. § 12.130 promulgated to prevent the circumvention and frustration of such agreements. See Exec. Order No. 12475, 49 Fed. Reg. 19955 (May 11, 1984). Plaintiff does not question the President's authority to negotiate such an agreement with Korea, or to order the promulgation of section 12.130 to carry out such agreements. See Mast Industries, Inc. v. Regan, 8 CIT ___, 596 F. Supp. 1567 (1984); American Association of Exporters and Importers-Textile and Apparel Group v. United States, 751 F.2d 1239 (Fed. Cir. 1985).

Plaintiff contends that Congress has limited its delegation of authority to the President under section 204 to define products of "countries" for textile

restraint purposes to excluding from such restraints products subject to duty-free treatment under General Headnote 3(a). But the Court finds nothing in the legislative history of General Headnote 3(a) or section 204 which requires such an interpretation of these statutes. General Headnote 3(a) provides only for duty-free treatment for products of insular possessions. It is not impermissable for section 12.130(b), defining products for purposes of quantitative restraints on textiles, to affect products imported from insular possessions.

In effect, the country of origin of the merchandise was Korea for textile restraint purposes, and may have been the CNMI for duty and marking purposes.[11] This situation

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11. Since the merchandise was not entered, it was not assessed a rate of duty.

may be awkward, but there is no violation of General Headnote 3(a).

II. The Declaratory Judgment

Plaintiff asks for a declaratory judgment in several paragraphs in its complaint.[12] Plaintiff seems to request

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12. Plaintiff's complaint does not set forth separate causes of action. Plaintiff requests declaratory relief in the following numbered paragraphs:

> 14. . . . Plaintiff seeks a declaratory judgment that 19 C.F.R. § 12.130, as applied to the imported merchandise and to future importations of textile articles from the Commonwealth of the Northern Mariana Islands, is an ultra vires Executive Act, contrary to statute, and void.
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> 27. By Notice published at 50 Fed. Reg. 8650-51, March 4, 1985, the Chairman of the Committee for the Implementation of Textile Agreements, purports to permit a quantity of sweaters, not to exceed 70,000 dozen during the period November 1, 1984 through October 31,

that the Court declare ultra vires and void (1) section 12.130(b) on its face and as

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1985, to enter the United States without application of 19 C.F.R. 12.130, upon certification of the Government of the Commonwealth of the Northern Mariana Islands, pursuant to section 204, Agricultural Act of 1956, as amended. The provision is termed an "arrangement" and not an agreement.

28. Any arrangement or agreement propounded by the Executive Departments of the United States and the Commonwealth of the Northern Mariana Islands cannot be premised upon section 204, Agricultural Act of 1956, as amended, 7 U.S.C. 1854. Any such arrangement or agreement does not conform to said section and exceeds the power delegated thereby to the Executive by the Congress of the United States. Judgment is sought declaring the law in the premises.

37. 19 C.F.R. 12.130 in so far as it purports to limit the importation of products of the Northern Mariana Islands by criteria not enunciated by the Congress of the United States in General Headnote 3(a), TSUS, in the Covenant to Establish a Commonwealth of the Northern

applied (a) to plaintiff's merchandise; (b) to future shipments of plaintiff's merchandise; and (c) to "textile articles from" the CNMI; and (2) the notice of the Chairman of the Committee for the Implementation of Textile Agreements, limiting to 70,000 dozen the number of

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(cont.)

Mariana Islands in Political Union with the United States, and in the legislation passed by the Congress of the United States in furtherance thereof, is a regulation beyond the power of the Executive to adopt. Judgment is sought declaring any such criteria contrary to law and void.

42. The determination of the country of origin of the imported merchandise upon the basis of 19 C.F.R. 12.130 is contrary to law, since 19 C.F.R. 12.130 is without statutory basis as applied to the insular possession of the United States, and particularly to the Commonwealth of the Northern Mariana Islands. Judgment is sought declaring said regulation, as amended, adopted, and published on March 5, 1985 at 50 Fed. Reg. 8723-25, contrary to law and unenforceable in these respects.

sweaters that may be imported from the CNMI without application of section 12.130 during the period November 1, 1984 to October 31, 1985.

Plaintiff seeks relief under the Declaratory Judgment Act, 28 U.S.C. § 2201 (1982).[13] The Customs Court Act of 1980, § 301, 28 U.S.C. § 2643(c)(1) (1982), creating the Court of International Trade, specifically granted the Court authority to "order any . . . form of relief that is appropriate in a civil action, including.

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13. 28 U.S.C. § 2201 (1982) provides that "[i]n the case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration . . . ."

. . declaratory judgments."[14] Although the court has considered its jurisdiction to issue declaratory judgments under 28 U.S.C. § 1581(h) (1982),[15] see 718 Fifth Avenue Corp. v. United States, 7 CIT ___ (Slip Op. 84-39), apparently there has been no

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14. The Customs Court lacked power to grant equitable relief, and declaratory judgments sound in equity. Alberta Gas Chemicals, Inc. v. Blumenthal, 82 Cust. Ct. 77, 88, C.D. 4792, 467 F. Supp. 1245, 1254 (1979).

15. 19 U.S.C. § 1581(h) provides that the Court

> shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

judicial opinion discussing the Court's authority to issue declaratory judgments under 28 U.S.C. § 2643(c)(1) or 28 U.S.C. § 2201.

Analyzing the Declaratory Judgment Act, the Supreme Court has been clear that "[t]he requirements for a justiciable case or controversy are no less strict in a declaratory judgment proceeding than in any other type of suit. . . . This court is without power to give advisory opinions. . . . It has long been its considered practice not to decide abstract, hypothetical or contingent questions." Alabama Federation of Labor v. McAdory, 325 U.S. 450, 461 (1945). The Court therefore will examine each issue with respect to which plaintiff requests declaratory judgment to determine whether it presents "a real, substantial controversy between parties having adverse legal interests, [and is] a dispute definite

and concrete, not hypothetical or abstract." Babbit v. United Farm Workers National Union, 442 U.S. 289, 297-98 (1979).

Plaintiff concedes that section 12.130(b) validly regulates products of "countries". The Court has decided that plaintiff's merchandise was lawfully excluded pursuant to section 12.130(b) as a product of Korea. See pages 4-15, supra. Thus the Court has already held section 12.130(b) valid as applied to plaintiff's merchandise, and, by extension, future shipments of similar merchandise.

Plaintiff also challenges reference in section 12.130(b) to "products . . . of insular possessions" and application of the regulation to "products" of the CNMI.

An action under 19 U.S.C. § 1581(i) may be brought "by any person adversely affected or agrieved by agency action within the meaning of section 702 of title 5." 28

U.S.C. § 2631(i) (1982). But plaintiff has not alleged that it is adversely affected or aggreived by the regulation of products of insular possessions, since plaintiff's merchandise is a product of Korea and not the product of an insular possession. The Court may not issue a declaratory judgment "advising what the law would be on a hypothetical state of facts." Aetna Life Ins. Cc. of Hartford, Conn. v. Haworth, 300 U.S. 227, 241 (1937).

Plaintiff also lacks standing, on the present record, to challenge the directive of the Chairman of the Committee for the Implementation of Textile Agreements (CITA) to Customs, which permits 70,000 dozen sweaters to be imported from the CNMI without application of section 12.130 during the period November 1, 1984 to October 31,

1985.[16] Nothing in plaintiff's complaint, or in its brief on the pending motions, alleged any facts to indicate that plaintiff was or would be adversely affected or aggreived by the CITA directive.[17]

The Court holds that section 12.130(b) is valid as applied to plaintiff's

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16. Plaintiff challenges the directive on two grounds. First, it says that the Executive, and his delegee CITA, have no authority under section 204, or any other law, to impose quotas on goods imported from insular possessions. Second, plaintiff says that under the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, imports from the CNMI are "subject to the same treatment as imports from Guam," article 603(c), and that since the number of sweaters that may be imported from Guam without application of section 12.130 during the period is 160,000, the directive limiting CNMI is contrary to law.

17. The Court could consider a motion under Rule 59 of the Rules of this Court if plaintiff shows it is adversely affected or aggreived by the CITA directive.

merchandise, and that plaintiff lacks standing to claim that the regulation is invalid as applied to products of the CNMI or to challenge the CITA directive excepting 70,000 dozen sweaters imported from the CNMI.

III. Conclusion

The Court holds that General Headnote 3(a) of the TSUS regulates only duty paid on imports from insular possessions and does not define the country of origin of merchandise imported from insular possessions for all purposes; that plaintiff's merchandise was lawfully excluded pursuant to section 12.130(b) as a product of Korea; and that plaintiff lacks standing to challenge (1) section 12.130 as applied to products of insular possessions and (2) the CITA directive.

Defendant's motion for summary judgment is granted. So ordered.

Dated: New York, New York
March 24, 1986

DOMINICK L. DiCARLO
JUDGE

JUDGMENT

UNITED STATES COURT OF INTERNATIONAL TRADE

DOMINICK L. DiCARLO, JUDGE

YURI FASHIONS CO., LTD., Plaintiff,	:	
v.	:	BEFORE:DiCARLO, JUDGE
THE UNITED STATES, Defendant,	:	Court No. 84-12-01807
and	:	
AMERICAN FIBER/TEXTILE/ APPAREL COALITION, Defendant-Intervenor.	:	

This case having been duly submitted for decision and the Court, after due deliberation, having rendered a decision herein, now, in conformity with said decision, it is hereby

ORDERED that plaintiff's motion for summary judgment is denied, defendant's

motion for summary judgment is granted, and this action is dismissed.

DOMINICK L. DiCARLO
JUDGE

Dated: New York, New York
March 24, 1986

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

6 Oct 1983
Refer to
CLA-2 CO:R:CV:VS
071476 JAF

Andrew P. Vance, Esq.
Barnes, Richardson & Colburn
475 Park Avenue South
New York, New York 10016

Dear Mr. Vance:

This ruling is in response to your July 22, 1983, letter on behalf of Yuri Fashions Company, Ltd., requesting a ruling on the duty status of certain garments to be assembled in Saipan in the Northern Mariana Islands.

ISSUE:

Whether certain garments which will be assembled and finished in the Northern Mariana Islands from components made in South Korea or Taiwan qualify for duty-free entry under General Headnote 3(a) of the

Tariff Schedules of the United States (TSUS).

FACTS:

The merchandise at issue consists of two garments for ladies and girls, a knit acrylic sweater (Yuri Fashions Style No. 3736) and a knit yarn (65 percent polyester, 35 percent cotton) shirt (Yuri Fashions Style No. 6605). As stated in your letter, the sweater is to be composed of the following components:

(1) Front and back panels;

(2) Two flat sleeve panels;

(3) One rib knit collar;

(4) One rib knit waistband;

(5) Two rib knit sleeve cuffs.

You state that you intend to have the pieces listed in (1), (2), and (3) knit in South Korea or Taiwan and the pieces listed in (4) and (5) knit in Saipan by a company unrelated to your client. In addition to knitting the

waistband and cuffs, the company in Saipan will perform the following operations:

(a) The imported parts listed in (1), (2), and (3) will be machine washed and hand pressed;

(b) Seams will be sewn in the sleeves;

(c) Side seams will be sewn joining the front and back panels;

(d) The sleeves will be sewn to the body of the sweater;

(e) The rib collar will be attached to the upper part of the body of the sweater by linking (joining together of knitted loops);

(f) The waistband will be joined to the body by sewing if it is hem-stitched or by linking if it has knit loops at the top;

(g) The cuffs will be joined to the sleeves by sewing or linking;

(h) The sweater will be sized by being heat-set, formed, and shaped;

(i) The sweaters will be trimmed by hand to remove excess yarn along the seams and to sew closed any holes;

(j) A label will be sewn into the garment and it will be packed for shipment.

The shirt is to be composed of the following components, all of which you state you intend to have made in South Korea or Taiwan:

(1) Front and back panels;

(2) Two flat sleeve panels;

(3) One collar;

(4) Two cuffs;

(5) One waistband.

The processes listed above for the sweater will all be performed in Saipan to produce the shirt except that all of the pieces will

be sewn together by means of hem-stitching and overlock stitching, with no linking involved.

LAW AND ANALYSIS:

Customs has ruled that General Headnote 3(a), TSUS, applies to importations from the Northern Mariana Islands. Headquarters ruling 071005, dated March 7, 1983 (copy enclosed). Section 603(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241) provides that imports from the Northern Mariana Islands shall be subject to the same treatment as imports from Guam. Consequently, duty-free treatment may be accorded imports from the Northern Mariana Islands provided that all requirements of General Headnote 3(a) and 19 CFR section 7.8 are met.

Whether an article is a "product" of an insular possession within the meaning of General Headnote 3(a), TSUS, depends upon whether substantial processing operations are performed in the insular possession. Customs has consistently ruled that Headnote 3(a) requires more than merely "some processing." Articles imported into the insular possession must undergo extensive operations to satisfy the requirement that the merchandise be the growth or product of the possession.

Customs has ruled previously on a fact situation similar to that at hand. Headquarters ruling 067217, dated April 10, 1981 (copy enclosed). The operations performed on the garments involved in that ruling do not appear to be any more extensive than those involved here. Therefore, we see no reason to deny duty-free treatment to the merchandise at issue provided that the other

requirements of General Headnote 3(a) are met and provided that the importer complies with 19 CFR section 7.8.

CONCLUSION:

It is our opinion that the operations described above are sufficient to cause the merchandise in question to be considered a product of the Northern Mariana Islands, entitled to entry into the United States free of duty under General Headnote 3(a) provided the value limitation of the statute is met and the importer complies with section 7.8 of the Customs Regulations.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosures

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR 07 1983

Refer to
CLA-2 CO:R:CV:S
071005 FF

Your letters of September 27, and October 9, 1982, concern the application of General Headnote 3(a), Tariff Schedules of the United States (TSUS), to importations from the Northern Mariana Islands.

Based on several documents which you submitted with your letters you are of the opinion that General Headnote 3(a), TSUS, is applicable to such importations. Following a review of those documents and our own research into this question, we agree.

Section 603(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-

241), which provides that imports from the Northern Mariana Islands shall be subject to the same treatment as imports from Guam, became effective January 9, 1978, pursuant to Presidential Proclamation 4534 (October 24, 1977, 42 F.R. 56593). Based on the legislative history relating to the Covenant, as set forth in Senate Report 94-433, it is clear that section 603(c) was drafted with General Headnote 3(a) TSUS, specifically in mind. Accordingly, under General Headnote 3(a), which allows duty-free treatment for certain merchandise imported into the United States from Guam and other insular possessions of the United States, duty-free treatment may now be accorded to importations from the Northern Mariana Islands provided that all requirements set forth in the Headnote and in the regulations issued thereunder are met.

We have enclosed for your information a copy of General Headnote 3(a), TSUS, and a copy of section 7.8, Customs Regulations, which sets forth the procedural requirements for obtaining duty-free treatment under the Headnote. Should you have any additional questions concerning import procedures under Headnote 3(a), you may wish to write or call the District Director of Customs, Honolulu, Hawaii.

Sincerely,

Russell Arnold
Chief, Special
Classification Branch

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 10 1981

CLA-2:CO:R.:CV:S
067217 AI

In your letter of March 26, 1981, you ask if General Headnote 3(a), Tariff Schedules of the United States (TSUS), is applicable to the manufacture in Guam of certain knit sweaters and shirts under the facts and circumstances set forth in our ruling to your firm dated April 19, 1979, (our file 059089).

The information indicates that one sweater has five parts consisting of two sleeve panels, a neck piece, and front and back panels; the second sweater consists of one rear panel, two full length sleeves, two front panels with pockets, and a strip of narrow fabric which will form a placket. In

Guam, the following operations will be performed to the articles.

1. The front panels will be sewn to the back panels.
2. The placket and neck piece will be sewn to the front and back panels.
3. The sleeves will be sewn closed and then sewn to the armholes formed by the joining of the front and back panels.
4. Some trimming of excess material will be done to complete 1, 2 and 3, above.
5. In the case of the cardigan, buttons will be affixed to the placket. The buttonholes, as stated in the March 26, 1981 letter, "will be formed by the producer of the components", and not in Guam.

6. Labels will be sewn to the finished garments. Unlike the ruling in 059089, the washing and pressing of the garments will not be performed in Guam.

It is unnecessary under the circumstances to restate the law and the applicable regulations in this letter.

In view of the operations stated above, it is our opinion that the sweaters are entitled to enter the United States under General Headnote 3(a), TSUS, provided the value limitation of the statute is met and there is compliance with section 7.8(d), Customs Regulations.

Your letter of March 26, 1981 mentions "sweaters and shirts". However, nothing in

the file indicates that shirt components will be exported to Guam.

Sincerely,

(Signed) R.X. ARNOLD
Russell Arnold
Chief, Special
Classification Branch

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

Aug 09 1983

Refer to
MAR-2-05 CO:R:E:E
722754 FBO

Andrew P. Vance, Esq.
Barnes, Richardson & Colburn
475 Park Avenue South
New York, New York 10016

Dear Mr. Vance:

This is in response to your letter of July 22, 1983, concerning the country of origin marking requirements for the Commonwealth of the Northern Mariana

Islands. Our response to your ruling is contained in the enclosed ruling.

Sincerely,

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise
Branch

Enclosure

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

Aug 09 1983

Refer to
MAR-2-05 CO:R:E:E
722754 FBO

This ruling concerns the country of origin marking of goods from the Commonwealth of the Northern Mariana Islands.

ISSUE:

Whether the marking designations below are adequate to satisfy 19 U.S.C. 1304.

FACTS:

The importer intends to import textile goods from the Northern Mariana Islands. Assuming that the textile goods are in fact products of those Islands, the importer requests that Customs approve, "Made in Northern Mariana Islands (U.S.A.)"; or

"Product of the Northern Mariana Islands (U.S.A.)."

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

The marking designations "Made in Northern Mariana Islands (U.S.A.)" or "Product of the Northern Mariana Islands (U.S.A.)" are both acceptable for 19 U.S.C. 1304.

HOLDING:

The above designations for goods from the Northern Mariana Islands are acceptable.

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise
Branch

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

5 Oct 1984

Refer to
CLA-2 CO:R:CV:G
553239 PR

Andrew P. Vance, Esq.
Barnes, Richardson & Colburn
475 Park Avenue South
New York, New York 10016

Dear Mr. Vance:

This is in reply to your letter of August 8, 1984, on behalf of Yuri Fashions Company, Ltd., in which you request a ruling on the duty-free status of certain sweaters assembled in the Commonwealth of the Northern Mariana Islands.

In view of recently promulgated interim Section 12.130, Customs Regulations, you request, in effect, a reaffirmation of Customs Ruling (CR) 071476, of October 6, 1983, which held that the assembly in the Northern Marianas of 8 sweater parts and 8

shirt parts manufactured in either South Korea or Taiwan resulted in the completed articles, sweaters and shirts, being considered products of the Northern Marianas. As such, that merchandise was considered to be subject to duty-free treatment upon its importation into the United States provided that the other requirements of General Headnote 3(a), Tariff Schedules of the United States (TSUS), and Section 7.8, Customs Regulations, are complied with.

Section 12.130(b)(1)(ii), Customs Regulations, specifically states that no article or material is considered to be substantially transformed (made into a product of another country) if it is merely assembled from otherwise completed component parts. The situation intended to be covered is exactly the same as that ruled upon in CR 071476, which included other

processes normally incident to the assembly process - - washing, pressing, sizing, shaping, etc.

While Section 12.130 is applicable on its face only to textiles and textile products subject to Section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), and is, therefore, only concerned with country of origin determinations for textile restraint purposes, the principles of origin contained in Section 12.130 were derived from court cases defining the term "substantial transformation." Accordingly, it is the view of the Customs Service that those principles are effective for all country of origin determinations, including for tariff and marking purposes. Customs' interpretation of the applicable judicially expressed principles of country of origin is in direct conflict with CR 071476.

However, the Customs Service recognizes that because of the publication of C.S.D. 80-10 and the issuance of administrative rulings, such as CR 071476, an established and uniform practice has developed to consider certain assembly operations, such as those described in CR 071476, as constituting a change in the country of origin of the assembled parts, for both duty and marking purposes. Accordingly, pursuant to Section 177.10(c)(1) and 177.10(c)(2), Customs Regulations, the Customs Service will follow the established and uniform practices for duty and marking purposes until a formal change of practice and position, as required by 19 U.S.C. 1315 and Section 177.10(c), has been completed. The practices in no way affect the application of Section 12.130 for textile restraint purposes.

The established and uniform practice is also applicable to the second garment (style 7240) which you asked about. However, since the front and back of that garment consists of 10 panels, it may be argued that the assembly of those panels with the other 6 parts (sleeves, collar, waistband, and cuffs) amount to a fabrication, as opposed to an assembly, and, conceivably, may not be affected by a change of practice. This situation can only be addressed after a change of practice has been effectuated.

Additionally, we do not believe that the knitting of sleeve cuffs and waistband for style 3736 in the Northern Marianas, combined with the assembly process, is sufficient to confer Northern Marianas origin to that merchandise under the principles contained in Section 12.130. However, under the existing practice, until changed, such merchandise will continue to

be a product of the Northern Marianas for duty and marking purposes.

Accordingly, for the present, the assembly of the garment parts described in CR 071476 and in your letter will cause the garments concerned to be products of the Northern Marianas and subject to duty-free treatment if the requirements of General Headnote 3(a) and Section 7.8, Customs Regulations are met.

Sincerely,

Robert P. Schaffer
Assistant Commissioner
(Commercial Operations)

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

Mar 19 1976

Refer to
CLA-2:R:CV:MS
044113 I

Dear [omitted]:

In your letter of February 6, 1976, on behalf of [omitted], you ask if General Headnote 3(a), Tariff Schedules of the United States (TSUS), is applicable to long and short sleeve shirts, T-shirts, and tank tops made in Guam. The samples submitted show the articles in their finished condition and in the condition in which the foreign articles are imported into Guam.

Exhibits A and B, attached to your letter, set out the condition in which the articles are imported into Guam and the operation performed to them in Guam. With the exception of the tank top, we have

previously held that, in order to qualify as an article manufactured or produced in Guam, the following minimal operations must be performed in Guam to the following designated articles:

A. Long sleeve shirts (blouses).

1. Shoulder seams (2) must be sewn from the neckband to the point where the sleeves are sewn to the body of the shirts. The shoulder seams may be sewn only at the point where they are attached to the neckband whem imported into Guam.

2. The sleeve cuffs must be sewn to each sleeve. The sleeves may be imported in a tubular condition (sewn, but minus the cuffs).

3. Each sleeve must be sewn to the body of the shirt at each shoulder.

4. All side seams must be sewn to form the body of the shirt. The three separate panels forming the body of the shirt may be sewn to the neckband when imported into Guam. Hemline at bottom of shirt is sewn.

5. The buttonholes must be made in Guam.

B. Short sleeve shirt (blouse)

1. Same as long sleeve shirt, except that in place of sleeve hem must be sewn.

C. Long sleeve T-shirt

1. Both shoulder seams must be sewn to join the front and back panels. However, the panels may

be sewn to the neckband when imported into Guam.

2. Both side seams must be sewn forming the body of the T-shirt.
3. The hem must be sewn at the bottom of the T-shirt body.
4. The sleeves must be imported in a flat condition and sewn to the shoulders. Sleeve hem must be sewn.
5. If neckbands and sleeve bands are separately made in a country other than Guam, they may be imported into Guam and sewn to the body of the T-shirts there.

D. Short sleeve T-shirt

1. Same as long sleeve T-shirt.

E. Tank Top

1. Front and back panel must be sewn together at shoulder and sides.

2. Neck and sleeve bands, if made in a country other than Guam, must be sewn to the body of the garment in Guam.

Because the company is presently operating in Guam and exporting goods to the United States under General Headnote 3(a), TSUS, we are not enclosing a copy of the law or the Customs regulations. We are also in receipt of a new manufacturer's statement satisfactorily setting forth all other pertinent information.

A copy of this letter if [sic] being sent to Customs officials in Guam.

Sincerely yours,

(Signed) R. Arnold for
Salvatore E. Caramagno
Director
Classification and Value
Division

DEPARTMENT OF THE TREASURY
BUREAU OF CUSTOMS
Washington

May 14, 1973
R:CV:S
017.4 I
027371

Dear [omitted]:

Your letter of April 24, 1973, requests that we reconsider our ruling of March 19, 1973, holding that certain coats and trousers assembled by [omitted], in Guam would not qualify for duty-free entry into the United States under General Headnote 3(a), Tariff Schedules of the United States (TSUS). This letter is directed to the assembly of the coats; the matter of the trousers was concluded in our letter to you of May 1, 1973. Submitted with your letter were samples representing the components of the coats in their condition as imported into Guam. Those components are described as follows:

1. Two sleeves, cuffed, with lining attached only at the cuff.
2. Balance of the coat, minus sleeves, buttons and shoulder bias tape.

The following operations, you state, are performed in Guam to the above-described components:

a. The sleeve tubes are precisely matched to the armhole;

b. The shoulder lining is pre-basted and the lining on the forepart and the back part is basted;

c. The excess canvass and shoulder pad is trimmed to one-quarter inch;

d. Using a sleeve baster the sleeve is joined to the body piece. The stitching goes through the canvass, shoulder pads and shoulder outlet beginning at the bottom notch.

e. Simultaneously with operation d above, the bias tape is fed through halfway up front the armhole;

f. Check on the model that the natural sleeve position has no wrinkle, pucker or twist at the shoulder line or elbow while at the same time check to match fabric patterns of body and chest perfectly. If there is a wrinkle, or twist, or if the fabric patterns do not match, remove the basting and begin again;

g. The sleeve is then stitched to permanently be joined with the body, and the sleevehead is added from mid-shoulder front to mid-shoulder back;

h. All sleeve basting is removed and the sleeve lining is basted to the armhole;

i. The foregoing operation is repeated for the left sleeve except that the operation will be done in reverse, hence, a one-quarter inch tolerance forward is necessary;

j. After both sleeves are thus joined to the body and the lining permanently attached, the shoulder lining, sleeve lining and armhole lining can be hand finished;

k. The lining fullness is distributed evenly to avoid twisting;

l. Line up sleeve button template and sew two buttons by hand on each sleeve, and locked securely;

m. Line up front template for front buttons. These buttons are sewn at least eight times and six turns to create neck and locked securely;

n. Template for buttonholes will be marked out and sewn;

o. Paper side tickets and cloth labels will be affixed;

p. The shoulder and sleevehead will be pressed and the armhole crossed inside from the middle of front armhole to middle of back armhole; and

q. The exported article will be a tailored cost which will be finally inspected then boxed and cartoned for direct shipment to the United States Mainland.

The above information indicates that, even though the sleeves must be precisely fitted to the coat (armhole) and there is prior basting before the sleeves are utimately attached, the operation is essentially a sewing operation. Therefore, in view of prior administrative precedents, merely sewing two sleeves to the body of a coat does not create an article considered

manufactured or produced in Guam within the scope of General Headnote 3(a), TSUS. Accordingly, coats manufactured in the manner described above would be subject to duty on their full value and total quantity when imported into the Customs terriotry of the United States.

If, however, in addition to attaching the two sleeves, the operation would include sewing together the center seams of the coat shell and the lining, sewing the armshields to the armholes, sewing the buttonholes (or cutting the buttonholes), we would consider the coats manufactured or produced in Guam. Therefore, if the value limitations of the law are met, the coats would be entitled to enter the United States free of duty under

the provision of General Headnote 3(a), TSUS.

Sincerely yours,

(Signed)
Salvatore E. Caramagno
Director
Classification and
Value Division

CONSTITUTION OF THE UNITED STATES

ARTICLE I

Section 8, Clause 1. Powers of Congress; levy of taxes for common defense and general welfare; uniformity of taxation

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;"

Section 8, Clause 3. Regulation of commerce

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

ARTICLE IV

Section 3, Clause 2

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

TRUSTEESHIP AGREEMENT FOR THE TRUST TERRITORY OF THE PACIFIC ISLANDS

PREAMBLE

"Whereas Article 75 of the Charter of the United Nations provides for the establishment of an International Trusteeship System for the administration and supervision of such territories as may be placed thereunder by subsequent agreements; and

Whereas under Article 77 of the said Charter the Trusteeship System may be applied to territories now held under mandate; and

Whereas on 17 December 1920 the Council of the League of Nations confirmed a mandate for the former German Islands north of the Equator to Japan, to be administered in accordance with Article 22 of the Covenant of the League of Nations; and

Whereas Japan, as a result of the Second World War, has ceased to exercise any authority in these Islands;

Now, therefore, the Security Council of the United Nations, having satisfied itself that the relevant articles of the Charter have been complied with, hereby resolves to approve the following terms of trusteeship for the Pacific Islands formerly under mandate to Japan:

ARTICLE 1

The Territory of the Pacific Islands, consisting of the islands formerly held by Japan under mandate in accordance with Article 22 of the Covenant of the league of Nations, is hereby designated as a strategic area and placed under the Trusteeship System established in the Charter of the United Nations. The Territory of the Pacific Islands is hereinafter referred to as the Trust Territory.

ARTICLE 2

The United States of America is designated as the Administering Authority of the Trust Territory.

ARTICLE 3

The Administering Authority shall have full powers of administration, legislation, and jurisdiction over the Territory subject to the provisions of this Agreement, and may apply to the Trust Territory, subject to any modifications which the Administering Authority may consider desirable, such of the laws of the United States as it may deem appropriate to local conditions and requirements.

* * *

ARTICLE 6

In discharging its obligations under Article 76b of the Charter, the Administering Authority shall:

1. Foster the development of such political institutions as are suited to the Trust Territory and shall promote the development of the inhabitants of the Trust Territory towards self-government or independence as may be appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the Trust Territory a progressively increasing share in the administrative services in the Territory; shall develop their participation in government; shall give due recognition to the customs of the inhabitants in providing a system of law for the Territory; and shall take other appropriate measures towards these ends;

2. Promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources; encourage the development of fisheries, agriculture, and industries; protect the inhabitants against the loss of their lands and resources; and improve the means of transportation and communication;

3. Promote the social advancement of the inhabitants, and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect the health of the inhabitants; control the traffic in arms and ammunition, opium and other dangerous drugs, and alcohol and other spirituous beverages; and institute such other regulations as may be necessary to protect the inhabitants against social abuses; and

4. Promote the educational advancement of the inhabitants, and to this end shall take steps towards the establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population; and shall encourage qualified students to pursue higher education, including training on the professional level.

* * *

ARTICLE 8

* * *

4. The Administering Authority may negotiate and conclude commercial and other treaties and agreements with members of the United Nations and other States, designed to attain for the inhabitants of the Trust Territory treatment by the Members of the United Nations and other States no less favourable than that granted by them to the nationals of other States. The Security Council may recommend, or invite other organs of the United Nations to consider and recommend, what rights the inhabitants of the Trust Territory should acquire in consideration of the rights obtained by Members of the United Nations in the Trust Territory.

ARTICLE 9

The Administering Authority shall be entitled to constitute the Trust Territory into a customs, fiscal, or administrative union or federation with other territories under United States jurisdiction and to establish common services between such

territories and the Trust Territory where such measures are not inconsistent with the basic objectives of the International Trusteeship System and with the terms of this Agreement.

* * *

ARTICLE 11

1. The Administering Authority shall take the necessary steps to provide the status of citizenship of the Trust Territory for the inhabitants of the Trust Territory.

2. The Administering Authority shall afford diplomatic and consular protection to inhabitants of the Trust Territory when outside the territorial limits of the Trust Territory or of the territory of the Administering Authority.

ARITCLE 12

The Administering Authority shall enact such legislation as may be necessary to place the provisions of this Agreement in effect in the Trust Territory.

* * *

ARTICLE 14

The Administering Authority undertakes to apply in the Trust Territory the provisions of any international conventions and recommendations which may be appropriate to the particular circumstances of the Trust Territory and which would be conducive to

the achievement of the basic objectives of article 6 of this Agreement."

* * *

AGRICULTURAL ACT OF 1956, SECTION 204, AS AMENDED, 7 U.S.C. 1854

"The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any agricultural commodity or product manufactured therefrom or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carry out any such agreement. In addition, if a multilateral agreement has been or shall be concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement. Nothing herein shall affect the authority provided under section 624 of this title."

COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA.

"Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

Whereas, the United States supports the desire of the people of the Northern Mariana Islands to exercise their inalienable right of self-determination; and

Whereas, the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government based upon the principles of government by the consent of the governed, individual freedom and democracy; and

Whereas, for over twenty years, the people of the Northern Mariana Islands, through public petition and referendum, have clearly expressed their desire for political union with the United States;

Now, therefore, the Marianas Political Status Commission, being the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States have entered into this

Covenant in order to establish a self-governing commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the United States. This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination.

ARTICLE I

POLITICAL RELATIONSHIP

SECTION 101. The Northern Mariana Islands upon termination of the Trusteeship Agreement will become a self-governing commonwealth to be known as the 'Commonwealth of the Northern Mariana Islands', in political union with and under the sovereignty of the United States of America.

SECTION 102. The relations between the Northern Mariana Islands and the United States will be governed by this Covenant which, together with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands.

* * *

SECTION 104. The United States will have complete responsibility for and authority with respect to matters relating

to foreign affairs and defense affecting the Northern Mariana Islands.

SECTION 105. The United States may enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands, but if such legislation cannot also be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands. In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of that authority so that the fundamental provisions of this Covenant, namely Articles I, II and III and Sections 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands.

* * *

ARTICLE III

CITIZENSHIP AND NATIONALITY

* * *

SECTION 304. Citizens of the Northern Mariana Islands will be entitled to all privileges and immunities of citizens in the several States of the United States.

* * *

ARTICLE VI

REVENUE AND TAXATION

* * *

SECTION 603. (a) The Northern Mariana Islands will not be included within the customs territory of the United States.

(b) The Government of the Northern Mariana Islands may, in a manner consistent with the international obligations of the United States, levy duties on goods imported into its territory from any area outside the customs territory of the United States and impose duties on exports from its territory.

(c) Imports from the Northern Mariana Islands into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs territory of the United States.

(d) The Government of the United States will seek to obtain from foreign countries favorable treatment for exports from the Northern Mariana Islands and will encourage other countries to consider the Northern Mariana Islands a developing territory.

SECTION 604. (a) The Government of the United States may levy excise taxes on goods manufactured, sold or used or services rendered in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam.

(b) The Government of the Northern Mariana Islands will have the authority to impose excise taxes upon goods manufactured,

sold or used or services rendered within its territory or upon goods imported into its territory, provided that such excise taxes imposed on goods imported into its territory will be consistent with the international obligations of the United States.

* * *

ARTICLE VII

UNITED STATES FINANCIAL ASSISTANCE

SECTION 701. The Government of the United States will assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the financial responsibilities of local self-government. To this end, the United States will provide direct multi-year financial support tc the Government of the Northern Mariana Islands for local government operations, for capital improvement programs and for economic development. This initial period of such support will be seven years, as provided in Section 702.

* * *

ARTICLE X

APPROVAL, EFFECTIVE DATES, AND DEFINITIONS

* * *

SECTION 1003. The provisions of this Covenant will become effective as follows, unless otherwise specifically provided:

(a) Sections 105, 201-203, 503, 504, 606, 801, 903 and Article X will become effective on approval of this Covenant:

(b) Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601-605, 607, Article VII, Sections 802-805, 901 and 902 will become effective on a date to be determined and proclaimed by the President of the United States which will be not more than 180 days after this Covenant and the Constitution of the Northern Mariana Islands have both been approved; and

(c) The remainder of this Covenant will become effective upon the termination of the Trusteeship Agreement and the establishment of the Commonwealth of the Northern Mariana Islands.

* * *

Signed at Saipan, Mariana Islands on the fifteenth day of February, 1975.

For the people of the Northern Mariana Islands:

EDWARD DLG. PANGELINAN,
Chairman, Marianas
Political Status Commission.

VICENTE N. SANTOS
Vice Chairman, Marianas
Political Status Commission.

For the United States of America

Ambassador F. HAYDN WILLIAMS
Personal Representative
of the President of the
United States.

Members of the Marianas Political Status Commission:

JUAN LG. CABRERA,
VICENTE T. CAMACHO,
JOSE R. CRUZ,
BERNARD V. HOFSCHNEIDER,
BENJAMIN T. MANGLONA,
DANIEL T. MUNA,
DR. FRANCISCO T. PLACIOS,
JOAQUIN I. PANGELINAN,
MANUEL A. SABLAN,
JOANNES B. TAIMANAO,
PEDRO A. TENORIO"

TARIFF SCHEDULES OF THE UNITED STATES, 19 U.S.C. 1202

General Headnote 3(a)

"3. Rates of Duty. The rates of duty in the "Rates of Duty" columns numbered 1 and 2 and the column designated Special of the schedules apply to articles imported into the customs territory of the United States as hereinafter provided in this headnote:

(a) Products of Insular Possessions.

(i) Except as provided in headnote 6 of subpart E of part 2 of schedule 7, and except as provided in headnote 3 of subpart A of part 7 of schedule 7, articles imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 70 percent of their total value (or more than 50 percent of their total value with respect to articles described in section 213(b) of the Caribbean Basin Economic Recovery Act), coming to the customs territory of the United States directly from any such possession, and all articles previously imported into the customs territory of the United States with

payment of all appicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty.

(ii) In determining whether an article produced or manufactured in such insular possession contains foreign materials to the value of more than 70 percent, no material shall be considered foreign which either--

> (A) at the time such article is entered, or
> (B) at the time such material is imported into the insular possession,

may be imported into the customs territory from a foreign country, other than Cuba or the Philippine Republic, and entered free of duty; except that no article containing material to which (B) of this subdivision applies shall be exempt from duty under subdivision (i) unless adequate documentation is supplied to show that the material has been incorporated into such article during the 18-month period after the date on which such material is imported into the insular possession.

(iii) Subject to the limitations imposed under section 503(b) and 504(c) of the Trade Act of 1974, articles designated eligible articles under section 503 of such Act which are imported from an insular possession of the United States shall receive duty treatment no less favorable

than the treatment afforded such articles imported from a beneficiary developing country under title V of such Act.

(iv) Subject to the provisions in section 213 of the Caribbean Basin Economic Recovery Act, articles which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such articles when they are imported from a beneficiary country under such Act."

General Headnote 10(a)

"10. General Interpretive Rules. For the purposes of these schedules --

(a) the general, schedule, part, and subpart headnotes, and the provisions describing the classes of imported articles and specifying the rates of duty or other import restrictions to be imposed thereon are subject to the rules of interpretation set forth herein and to such other rules of statutory interpretation, not inconsistent therewith, as have been or may be developed under administrative or judicial rulings;"

Presidential Proclamation 5564 of November 3, 1986

"Placing Into Full Force and Effect the Covenant With the Commonwealth of the Northern Mariana Islands, and the Compacts of Free Association With the Federated States of Micronesia and the Republic of the Marshall Islands

51 F.R. 40399 [in part]

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which includes the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On February 15, 1975, after extensive status negotiations, the United States and the Marianas Political Status Commission concluded a Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States ("Covenant"). Sections 101, 1002, and 1003(c) of the Covenant provide that the Northern Mariana Islands will become a self-governing Commonwealth in political union with and under the sovereignty of the United States. This Covenant was approved by the Congress by Public Law 94-241 of March 24, 1976, 90 Stat. 263. Although many sections of the Covenant became effective in 1976 and 1978, certain sections have not previously entered into force.

* * *

On May 28, 1986, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands had freely exercised their right to self-determination, and considered that it was appropriate for that Agreement to be terminated. The Council asked the United States to consult with the governments concerned to agree on a date for entry into force of their respective new status agreements.

* * *

On October 24, 1986, the United States advised the Secretary General of the United Nations that . . . as a result of consultations with their governments, agreement had been reached that the . . . Covenant with the Commonwealth of the Northern Mariana Islands would enter into force on November 3, 1986.

As of this day, November 3, 1986, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia, and they are self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of

the peoples of the Northern Mariana Islands, the Federated States of Micronesia, and the Marshall Islands.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1002 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and Sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association", and for other purposes, approved on January 14, 1986 [Public Law 99-239], do hereby find, declare, and proclaim as follows:

Section 1. I determine that the Trusteeship Agreement for the Pacific Islands is no longer in effect as of October 21, 1986, with respect to the Republic of the Marshall Islands, as of November 3, 1986, with respect to the Federated States of Micronesia, and as of November 3, 1986, with respect to the Nothern Mariana Islands. This constitutes the determination referred to in Section 1002 of the Covenant.

Sec. 2. (a) Sections 101, 104, 301, 302, 303, 506, 806, and 904 of the Covenant are effective as of 12:01 a.m., November 4, 1986, Northern Mariana Islands local time.

(b) The Commonwealth of the Northern Mariana Islands in political union with and under the sovereignty of the United States of America is fully established on the date and at the time specified in Section 2(a) of this Proclamation.

(c) The domiciliaries of the Northern Mariana Islands are citizens of the United States to the extent provided for in Sections 301 through 303 of the Covenant on the date and at the time specified in this Proclamation.

(d) I welcome the Commonwealth of the Northern Mariana Islands into the American family and congratulate our new fellow citizens.

* * *

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh."

RONALD REAGAN

Executive Order 12572 of November 3, 1986

"Relations With the Northern Mariana Islands

51 F.R. 40401

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that, consistent with the Joint Resolution to approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," approved March 24, 1976 (Public Law 94-241; 90 Stat. 263), the relations of the United States with the Government of the Northern Mariana Islands shall, in all matters not the program responsibility of another Federal department or agency, be under the general administrative supervision of the Secretary of the Interior."

RONALD REAGAN

THE WHITE HOUSE
November 3, 1986

Executive Order 12475 of May 9, 1984

"Textile Import Program Implementation

49 F.R. 19955[1]

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 204 of the Agricultural Act of 1956, as amended (76 Stat. 104, 7 U.S.C. 1854), and Section 301 of Title 3 of the United States Code, and in order to prevent circumvention or frustration of multilateral and bilatereal agreements to which the United States is a party and to facilitate efficient and equitable administration of the United States Textile Import Program, it is hereby ordered as follows:

Section 1. (a) In accordance with policy guidance provided by the Committee for the Implementation of Textile Agreements (CITA), through its Chairman, in accordance with the provisions of Executive Order No. 11651, as amended, the Secretary of the Treasury shall issue regulations governing the entry or withdrawal from warehouse for consumption of textiles and textile products subject to Section 204 of the Act.

(b) Initial regulations promulgated under this section shall be promulgated no later than 120 days after the effective date of this order.

(c) To the extent necessary to implement more effectively the United States textile

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1. Footnotes in text omitted.

program under Section 204, such regulations shall include:

(i) clarifactions in, or revisions to, the country or origin rules for textiles and textile products subject to Section 204 in order to avoid circumvention of multilateral and bilateral textile agreements;

(ii) provisions governing withdrawals from a customs bonded warehouse of articles subject to this Order transformed, changed or manipulated in a warehouse after importation but prior to withdrawal for consumption; and

(iii) any other provisions determined to be necessary for the effective equitable administration of the Textile Import Program.

(d) Any such regulations may also include provisions requiring importers to provide additional information and/or documentation on articles subject to this order which are determined to be necessary for the effective and equitable administration of the Textile Import Program.

Sec. 2 (a) The Commissioner of Customs shall establish Textile Apparel Task Force (the Task Force) within the United States Customs Service to coordinate enforcement of regulations concerning importation under the Textile Import Program.

(b) CITA, through its Chairman, shall, in accordance with the provisions of Executive Order No. 11651, as amended, provide information and recommendations to the Task Force, through the Department of the

Treasury, on implementation and administration of the Textile Import Program.

(c) The Department of Treasury shall, to the extent practicable, inform the Chairman of CITA of the progress of all investigations concerning textile imports; provide notice to CITA of all requests for rulings on matters that could reasonably be expected to affect the implementation of the Textile Import Program; and take into consideration any comments on such requests that CITA, through its Chairman, timely submits.

Sec. 3. This order supplements, but does not supersede or amend, Executive Order No. 11651 of March 3, 1972, as amended.

Sec. 4. This order shall be effective upon its publication in the **Federal Register.**"

RONALD REAGAN

THE WHITE HOUSE
May 9, 1984

INTERIM REGULATION

T.D. 84-171 (1984)

19 C.F.R.

§ 12.130 Textiles and textile products country of origin [in part][2]

"(a) Country of origin. For the purpose of this section, textiles or textile products, subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), imported into the customs territory of the United States, are a product of a particular foreign territory or country or insular possession of the United States only if (1) the textiles or textile products are wholly the growth, product, or manufacture of that foreign territory or country or insular possession, or (2) in the case of an article which consists, in whole or in part, of materials which were the growth, product, or manufacture or were processed in another foreign territory or country, it has been substantially

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2. Interim regulation 19 C.F.R. 12.130, under which petititioner's merchandise was excluded, was adopted as a final regulation in T.D. 85-38, 50 Fed. Reg. 8710 (March 5, 1985), and subsequently amended by T.D. 86-57, 51 Fed. Reg. 8314 (March 11, 1986). Both rulings effected minor changes in the wording, but not the substance, of the interim regulation.

transformed by means of a substantial manufacturing or processing operation into a new and different article of commerce with a name, character, or use distinct from the article or material from which it was so transformed. Although this rule of origin shall determine the country of origin of textiles and textile products subject to Section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), the rule does not change the "foreign article" status of textiles and textile products under Headnote 2, Part 1, Schedule 8, TSUS (19 U.S.C. 1202).

(b) Criteria for determining country of origin.

(1) General. The criteria in paragraphs (b)(2) and (3) of this section shall be considered in determining country of origin. These criteria are not exhaustive. Fewer than all, or additional, factors may be considered. However, no article or material shall be considered to have been substantially transformed in a particular foreign territory or country or insular possession of the United States by virtue of having merely undergone any of the following: (i) simple combining or packaging operations, or (ii) the joining together by sewing, looping, linking or other means of attaching otherwise completed component parts, or (iii) cutting or otherwise separating of articles from material which has previously been marked with cutting lines or which contains lines of demarcation, of any type, commercially requiring that material to be cut in a certain manner, or (iv) processing, such as dyeing, printing, showerproofing,

superwashing, or other finishing operations.

(2) Substantial manufacturing or processing operation. To determine whether there has been a substantial manufacturing or processing operation, a comparison will be made between the article or material before the manufacturing or processing operation and the article in its condition after the manufacturing or processing operation with particular regard to the following criteria:

(i) Material costs,

(ii) Direct labor costs,

(iii) Other direct processing or manufacturing costs,

(iv) Time involved in the manufacturing or processing operation,

(v) Complexity of the manufacturing or processing operation,

(vi) Level or degree of skill or technology required in the manufacturing or processing operation,

(vii) Physical change of the material or article at each stage in the manufacturing or processing operation.

(3) New and different article. The following criteria will be used to determine whether, as a result of the manufacturing or processing operation, a new and different article has been produced:

(i) Change in commercial designation or identity,

(ii) Change in essential character,

(iii) Change in commercial use."

* * *

Supreme Court, U.S.
FILED
MAR 16 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1331

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

YURI FASHIONS CO., LTD.,

Petitioner,

v.

THE UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF *AMICUS CURIAE*, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, IN SUPPORT OF PETITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF AMICUS CURIAE, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, IN SUPPORT OF PETITION

To the Honorable Chief Justice and the Associate Justices of the Supreme Court:

The Commonwealth of the Northern Mariana Islands ("CNMI"), through its Attorney

General, hereby appears as amicus curiae and offers the following points and authorities in support of the petition of Yuri Fashions Co., Ltd., for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case (Petitioner's Appendix 1a (hereinafter "Pet. App.")), which affirmed the opinion and judgment of the United States Court of International Trade, 11 CIT ___, 632 F. Supp. 41 (1986) (Pet. App. 3a).

INTEREST OF AMICUS CURIAE

The CNMI, as amicus curiae, hereby appears by its Attorney General in this case pursuant to Rule 36.4 of the Rules of the United States Supreme Court, in view of its direct and substantial interest in the outcome of this litigation. Petitioner asserts that any merchandise imported into the United States from the CNMI which satisfies

the provisions of General Headnote 3(a) of the Tariff Schedules of the United States ("TSUS"), 19 U.S.C. 1202 (Pet. App. 94a), may lawfully enter the United States duty-free as a product of the CNMI. Petitioner has also asserted that regulations issued by the U.S. Treasury Department in 19 C.F.R. 12.130 (Pet. App. 105a-108a) do not lawfully apply to the CNMI and so are of no force and effect in determining the country of origin of merchandise imported into the customs territory of the United States from the CNMI. The CNMI, as amicus curiae, joins in support of these arguments advanced by petitioner.

The resolution of the issues presented herein has far-reaching implications for the CNMI, affecting not only the tariff and duty status of its products but also its economic viability, commercial development, and the employment and well-being of its populace. While the regulation challenged herein

affects all the insular possessions of the United States, the subject merchandise involved in this litigation was imported from the CNMI. The CNMI did, in fact, intervene as amicus curiae on behalf of petitioner herein before the Court of International Trade.

REASONS FOR GRANTING THE WRIT

The CNMI joins in the statement of the factual and legal issues and reasons for granting of the writ presented in the petition for a writ of certiorari, filed with this Court on February 13, 1987. Additionally, however, amicus curiae wishes to set forth certain reasons in favor of this Court's review of this case which are of particular importance to the CNMI.

I. The lower courts have decided an important question of federal law in a manner in conflict with the federal government's obligations to the CNMI embodied in the Trusteeship Agreement and Covenant.

Amicus curiae, the CNMI, is a new member of the American political family, having voted to associate itself in a close political relationship with the United States by approving the "Covenant to Establish the Commonwealth of the Northern Mariana Islands in Political Union with the United States," Pub. L. 94-241, 90 Stat. 263 (1976), reprinted as amended in 48 U.S.C. 1681 note (hereinafter "Covenant") (Pet. App. 87a-93a). As such, its residents and industries are not properly regulated under the foreign affairs powers of the President exercised pursuant to section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. 1854 (Pet. App. 86a).

Although it has been held in Mast Industries, Inc. v. Regan, 8 CIT 214, 596 F. Supp. 1567 (1984), appeal dismissed, (Fed. Cir. February 26, 1985), that the delegation of authority to regulate foreign commerce generally under section 204 was a valid delegation to the President by Congress, the CNMI submits that it is not lawfully subject to regulations issued by the Customs Service pursuant to that section because of its close political association with the United States of America. The lower courts erred in holding to the contrary as they failed to consider the unique features of that relationship which are embodied in the Trusteeship Agreement between the United States and the United Nations and the Covenant between the United States and the CNMI.

The CNMI was, until November 1986, a part of the Trust Territory of the Pacific Islands ("TTPI") which had been administered

by the United States since 1947 as a United Nations trusteeship. Pursuant to Article 3 of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, April 2, 1947, 8 U.N.T.S. 189, T.I.A.S. No. 1665, ratified by Congress July 18, 1947 (hereinafter "Trusteeship Agreement") (Pet. App. 80a-85a), the United States exercised "full powers of administration, legislation and jurisdiction..." under the supervision of the United Nations Security Council. The Trusteeship Agreement also imposed specific obligations upon the United States as the administering authority.

Article 6(1) of the Trusteeship Agreement required the United States to "...promote the development of the inhabitants of the Trust Territory toward self-government or independence..." as elected by the "...freely expressed wishes of the peoples concerned." Article 6(2) also required that

the United States "[p]romote the economic advancement and self-sufficiency of the inhabitants, and to this end shall...encourage the development of fisheries, agriculture, and industries."

In 1954 the Congress authorized administration of the TTPI by the Executive Branch by providing that the powers of administration granted to the United States in the Trusteeship Agreement be "...exercised in such manner and through such agency or agencies as the President of the United States may direct..." until such time as Congress should provide otherwise. 48 U.S.C. 1681(a). This agency was conferred upon the Secretary of the Interior by virtue of Executive Order 11021, 27 Fed. Reg. 4409 (1962), as amended by Executive Order 11944, 41 Fed. Reg. 42715 (1976); and the Secretary, in turn, delegated it to the Government of the Trust Territory of the Pacific Islands. See,

e.g., Department of Interior Order No. 2918, December 27, 1968, 34 Fed. Reg. 157 (1969). Thus, the Trust Territory of the Pacific Islands was a creature of federal law and depended upon its capacity as an agency of the federal government for its legitimacy.

Even the High Court of the Trust Territory of the Pacific Islands itself has long recognized that "...the Trust Territory Government seems clearly intended to come within the meaning of the words 'such agency or agencies as the President of the United States may direct or authorize as used in 48 U.S.C. Sec. 1681(a).'" Alig v. Trust Territory of the Pacific Islands, 3 T.T.R. 603, 612-613 (H.C. App. Div. 1967). Furthermore, courts have consistently held the TTPI not immune from suit in United States courts under the Foreign Sovereign Immunities Act, 28 U.S.C. 1602, because it was not a government of a foreign country.

People of Saipan v. U.S. Dep't of the Interior, 356 F. Supp. 645 (D. Haw. 1973), affirmed as modified on other grounds, 502 F.2d 90 (9th Cir. 1974), cert. denied, 420 U.S. 1003 (1975); Sablan Construction Co. v. Government of the TTPI, 526 F. Supp. 135 (D.N.M.I. 1981); World Communications Corp. v. Micronesian Telecommunications Corp., 456 F. Supp. 1122 (D. Haw. 1978).

During the trusteeship period it was recognized that the trusteeship was not a permanent relationship. Negotiations with the United States to determine the future political status of the islands of the TTPI were requested as early as 1966, and formal negotiations actually began in September, 1969. Liebowitz, The Marianas Covenant Negotiations, 4 Fordham Int'l L. J. 19, 20 (1981). The Northern Mariana Islands participated as a part of Micronesia's Joint Committee on Future Status along with

representatives of the other Micronesian island groups until it became clear that many of the other Micronesian representatives wanted to consider full independence as one of the status options. In April 1972 the Northern Mariana Islands' representatives indicated that they did not wish to pursue independence as a political status goal, and requested separate status negotiations to create a closer and more permanent relationship with the United States for the Northern Mariana Islands. This was not surprising as the people of the Northern Mariana Islands had persistently petitioned for termination of the trusteeship and incorporation of the Northern Mariana Islands into the United States as a territory beginning as early as 1951. See generally, To Approve "The Covenant to Establish a Commonwealth of the Northern Mariana Islands": Hearing on H.J.

Res. 549, H.J. Res. 550, H.J. Res. 547 Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs, 94th Cong., 1st Sess. 403 (1975) (statement of F. Hayden Williams, the President's personal representative) (hereinafter cited as "House Hearing").

These separate negotiations resulted in the signing of the Covenant on February 15, 1975. The Covenant was overwhelmingly approved by the people of the Northern Mariana Islands with a 78.8% majority vote in a plebiscite conducted on June 17, 1975, and enacted into federal law on July 10, 1975. All sections of the Covenant became fully effective on November 4, 1986. Pres. Proc. 5564, 51 Fed. Reg. 40399 (1986) (Pet. App. 97a).

By virtue of section 101 of the Covenant, the United States acquired sovereignty over the Northern Mariana Islands. By virtue

of section 104 of the Covenant, the United States acquired "...complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands." In section 105, the United States acquired the authority to "...enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands," and in section 301, the people of the Northern Mariana Islands acquired U.S. citizenship. Section 304 entitles citizens of the CNMI to the privileges and immunities of citizens of the several States of the United States. Sections 401 and 402 establish a Federal District Court for the Northern Mariana Islands.

Article V of the Covenant makes appropriate provisions of the Constitution and laws of the United States applicable in the CNMI. Section 603 excludes the CNMI from

the customs territory of the United States but makes imports from the Commonwealth into the United States eligible for duty-free entry pursuant to General Headnote 3(a), TSUS, in accordance with the tariff treatment afforded to Guam.[1]

It is clear that these trade provisions were of great importance to the Marianas status negotiators and to the voters who approved the Covenant. During the public education campaign preceding the plebiscite, section 603 was explained as follows:

> Essentially, this means that Northern Marianas goods will enter the customs territory--consisting of the states and the Commonwealth of Puerto Rico--duty free, provided that 50 percent

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1. Section 603 had entered into force prior to the importation of the subject merchandise and thus defines the tariff treatment of CNMI articles for the purposes of this litigation.

> or less of the value of the product (whether manufactured, produced or grown) derives from foreign materials,... This treatment of Northern Mariana Islands goods is a significant benefit, for it encourages industry in the Marianas to produce goods which can be shipped duty-free into the United States.

House Hearings, supra, at 647 (Marianas Political Status Comm'n, Section-by-Section Analysis of the Covenant to Establish a Commonwealth of the Northern Mariana Islands).

Section 701 of the Covenant provides for United States financial assistance to the CNMI to "...assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the

economic resources needed to meet the financial responsibility of local self-government" (emphasis supplied).

Section 204 of the Agricultural Act is intended to allow the President to negotiate agreements with "foreign governments" to limit the export of certain textiles and textile products of such countries to the United States. The CNMI cannot be considered to be such a foreign country in light of its political union with the United States. Congressional authority to legislate for the Trust Territory, and so for the Northern Mariana Islands, was recognized to emanate from the Territorial Clause of the Constitution of the United States, Article IV, section 3, clause 2. See Ralpho v. Bell, 569 F.2d 607, 618, reh. denied, 569 F.2d 636 (D.C. Cir. 1977). Section 105 of the Covenant perpetuates that authority where the CNMI is concerned but takes care to limit

that legislative authority by requiring that if a law "...cannot also be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands." The legislative history of the Covenant indicates that this was done to assure "...that Congress will exercise its special authority under Article IV, section 3, clause 2 purposefully, after taking into account the particular circumstances existing in the Northern Marianas." House Hearings, supra, at 630 (Marianas Political Status Comm'n, Section-by-Section Analysis of the Covenant to Establish a Commonwealth of the Northern Mariana Islands). Clearly, the CNMI was not expressly or implicitly included within the ambit of section 204. Consequently, Covenant section 105 precludes application of section 204 of the Agricultural Act to the CNMI. See, e.g.,

Gale v. Andrus, 643 F.2d 826 (D.C. Cir. 1980).

The Territorial Clause does grant broad powers to the Congress for it carries the authority to enact laws which will have effect within the Commonwealth to a greater extent that it can do within a state. It does not, however, authorize the application of foreign affairs authority to the CNMI. Indeed, Covenant section 104 empowers the United States to conduct foreign affairs on behalf of the Commonwealth of the Northern Mariana Islands. It would be incongruous for the federal government to conduct foreign affairs on behalf of the CNMI while, at the same, regulate the Commonwealth as if it were a foreign country. How can the United States fulfill the promise of Covenant section 603(d), to "...seek to obtain from foreign countries favorable treatment for exports from the Northern Mariana

Islands..." and to "...encourage other countries to consider the Northern Mariana Islands a developing territory", while treating the Commonwealth as if it were a fully developed foreign country under its own regulations? Covenant section 605(b) precludes the CNMI from levying duties on goods imported into the Commonwealth from the United States. It would unfairly imbalance the trade relationship established in the Covenant negotiations to permit the United States to levy duty upon our goods under 19 C.F.R. 12.130.

The Commonwealth is not a party to any of the bilateral or multi-lateral textile trade agreements to which the United States is a party. Nor is the President authorized by section 204 to limit the exportation of such products into the United States from the Commonwealth by virtue of agreements obtained with "foreign countries" because the

Congress has clearly provided in both the Trusteeship Agreement and the Covenant that the CNMI is not to be regarded as "foreign" to the United States. The lower courts in this case have rendered decisions which are incompatible with United States obligations under these documents, and the policies expressed therein.

The American flag flies over the Commonwealth's Civic Center on Saipan and over the schools, and all public buildings in the CNMI. American English is the official language, the dollar is legal tender, and the zip code is 96950. The products of our industry should be considered to be American products and should not be restricted by the foreign affairs authority of the United States.

II. The lower courts have decided an important question of federal law in a manner in conflict with the stated Congressional policy goal of fostering economic and industrial development in the insular possessions of the United States.

The provisions of General Headnote 3(a), TSUS, represent the culmination of a long history of Congressional enactment of duty-free tariff treatment for products of insular possessions, based upon liberal origination requirements. Antecedent provisions to present Headnote 3(a) granting duty-free or preferential tariff treatment to products of insular possessions can be found in a long history of tariff legislation. See e.g. Customs Simplification Act of 1954, Pub. L. 768, § 401, 69 Stat. 1136; Tariff Act of 1930, § 301, 46 Stat. 590; Tariff Act of 1922, § 301, 42 Stat. 858; Tariff Act of 1913, § IV C, 38 Stat. 114; Tariff Act of 1909, § 5, 36 Stat. 11.

In the case of textile products, such as petitioner's sweaters, so long as the product does not contain foreign materials in excess of 50% of its total value, the processing and operations in the CNMI had long been recognized and accepted under General Headnote 3(a) as sufficient to confer origin status upon the CNMI, at least prior to the promulgation of the regulation, 19 C.F.R. 12.130, here in issue. See, e.g., U.S. Customs Service, Headquarters Ruling 71476, October 6, 1983 (Pet. App. 42a). This preferential treatment is consistent with the long-standing Congressional intent of conferring duty-free status under Headnote 3(a) to encourage the development of light industrial processing in the insular possessions and territories. As the island possessions lack sufficient resources to engage in major industrial manufacturing, the origin criteria in Headnote 3(a) was

recognized as a mechanism necessary to attract and stimulate business investment and encourage the establishment of light industrial processing and assembly operations in the possessions. See Senate Report No. 1679, 89th Cong., 2d Sess., reprinted in [1966] U.S. Code Cong. & Ad. News 4390 (commenting on section 401 of the Customs Simplification Act of 1954, Pub. L. 768, 68 Stat. 1213, which preceded the enactment of General Headnote 3(a) in the Tariff Classification Act of 1962, Pub. L. 87-456, 76 Stat. 72).

This stated policy of fostering the economic and industrial development and self-sufficiency in the insular possessions does not stem from mere governmental charity nor fiscal prudence. Rather, it has been recognized that the exercise of United States sovereignty over a dependent people carries with it great moral obligations to

protect, defend and provide for the general welfare of its inhabitants:

> "...the obligations correlative to this great power are of the highest character, and...it is our unquestioned duty to make the interests of the people over whom we assert sovereignty the first and controlling consideration in all legislation and administration which concerns them, and to give them, to the greatest possible extent, individual freedom, self-government in accordance with their capacity, just and equal laws, and opportunity for education, for profitable industry, and for development in civilization."

Cincinnati Soap Company v. United States, 301 U.S. 308, 314 (1937) (citations omitted).

In addition to these moral imperatives which are generaly applicable to all possessions over which the Government asserts sovereignty, the United States, in section 701 of the Covenant has expressly agreed to assist in the economic development of the CNMI. One means by which the United States

assists in that economic development is by affording goods from the CNMI duty-free status upon entering the customs territory of the United States under General Headnote 3(a), as provided for in section 603(c) of the Covenant.

It is noteworthy that the history of our Commonwealth has been that of dominance by various sovereign powers -- first Spain in 1521, then Germany, Japan, and ultimately the United States under the auspices of the United Nations Trusteeship. In negotiating the Covenant with representatives of the Northern Marianas, the United States, consistent with the United Nations Trusteeship Agreement and recognized principles of international law, gave the citizens of the Northern Mariana Islands an opportunity to exercise freely their right to self-determination. All provisions of the Covenant were carefully negotiated, and comprised the

agreement under which the Islanders voted to associate themselves as a Commonwealth "in political union with and under the sovereignty of" the United States. Both parties undoubtedly perceived mutual benefits to be gained from this freely chosen association.

At the time the Covenant was negotiated and approved by the voters, there can be no doubt that the CNMI perceived that the customs treatment afforded their goods thereunder would be the same as that of Guam, which was duty-free entry into the United States for articles of the CNMI, so long as the value of the foreign content was 50% or less (70% for watches), consistent with the established policy of the United States and its Customs Service at that time. This was the manner in which section 603 of the Covenant was explained to the Islanders, and the understanding upon which they voted. See House Hearings, supra, at 647. Further, in

reliance on the clear and unambiguous import of section 603, the CNMI has stressed the favorable U.S. customs treatment under General Headnote 3(a) in our endeavor to stimulate new business investment and expand the admittedly limited manufacturing industry in the CNMI. See e.g., CNMI, Dep't of Commerce & Labor, Guidelines to Doing Business in the Commonwealth of the Northern Mariana Islands 26 (October 1, 1980) (hereinafter cited as "Guidelines").[2] It is not only inappropriate but ultra vires for the Customs Service now unilaterally to alter the tariff status granted the CNMI under the Covenant.

The change in the established country of origin requirements by virtue of 19 C.F.R. 12.130, may appear insignificant at first,

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2. A copy of the Guidelines has been lodged with the Clerk of the Court.

but in practice works a dramatic alteration of past customs treatment of articles of CNMI origin. By now requiring the "substantial transformation" of articles processed in the CNMI -- a stringent test heretofore not only not applied to products of insular possessions but to products from other countries as well -- numerous articles undergoing assembly or processing operations, which had previously received General Headnote 3(a) treatment as products of the CNMI, are now classified as products of the foreign nations from whence their basic material components originated, even though the ultimate product meets the foreign content limitation imposed under the headnote and considered to have been substantially processed in the CNMI. These articles may now not only become dutiable as products of "foreign countries," and subject to quotas or other restrictions on

imports from "foreign countries," but, as a result thereof, be effectively excluded from entry into the United States.

As a practical matter, business firms face certain difficulties in becoming established in the CNMI. The Commonwealth has a small population and an underdeveloped infrastructure, and is distant from suppliers and markets. Furthermore, the islands were the site of fierce conflict between forces of the United States and Japan during World War II, which devastated our major cities. See generally Senate Report (Interior & Insular Affairs Committee) No. 94-596, 94th Cong., 2d Sess. 2, reprinted in [1976] U.S. Code Cong. & Ad. News 448, 449; Guidelines, supra, at 2-3, 6-7. A firm, overcoming such obstacles, may make the necessary investment in plant and equipment, in securing a labor force, and in otherwise establishing a business in the CNMI

intending to sell in the United States goods manufactured, grown or produced in the CNMI. The firm most likely will have made its investment relying on the implicit assurance that its goods will be able to enter the customs territory of the United States without payment of duty pursuant to General Headnote 3(a). The imposition of quotas or other quantitative restrictions that limit the ability of the firm to bring its goods into the United States market is an abrupt frustration of the firm's expectations.

It takes few such abrupt frustrations before investors decide that attempting to establish a business in the CNMI that will bring goods to consumers in the United States is simply not worth the risk. The purpose of General Headnote 3(a), in providing favorable treatment for goods of the insular possessions and the CNMI, will have been defeated, and a possible avenue toward the

economic development of the CNMI will have been closed.

Only one industry, garment manufacturing, has been established in the CNMI with the objective of exporting goods into the customs territory of the United States. Nonetheless, in August 1984, less than a year after the first of these factories began production, the United States Customs Service issued regulations that curtailed the ability of CNMI garment manufacturers to import garments into the United States. T.D. 84-171, 49 Fed. Reg. 31248, August 3, 1984. This redefinition of country of origin rules for insular possessions was accomplished in utter disregard of the stated Congressional policy to promote development of insular possessions by emphasizing light industry and assembly operations. Customs, following guidelines from the Committee on Implementation of

Textile Agreements ("CITA"), ignored a century of United States economic policy regarding the insular possessions in pursuit of what it apparently considered to be an all-important, predominant end: preventing the circumvention of textile quota agreements. However, there is no evidence that the small garment industry in the CNMI circumvents the said textile quota agreements. Further, the new textile origination rules, moreover, created a complex, unmanageable system for determining the proper country of origin of textiles imported from the insular possessions, resulting in the designation of two "countries" as the country of origin for the same product, according to the distinct purposes served by the individual origin rules.

Import quotas may generally be imposed, pursuant to authority granted by law, for a variety of reasons: for example, to protect

domestic industry from serious economic injury from foreign competition; to implement or enforce international trade agreements; or to reduce U.S. balance of payments deficits, prevent depreciation of the dollar, or correct international balance of payments disequilibrium.

In the international arena, the United States acts for the CNMI under the Covenant, sections 104, and 1003(c), and formerly under the Trusteeship Agreement, articles 3, 5, 8(4), 10 and 11(2). To regulate the international trade of a particular commodity or product, the United States, in negotiating a bilateral or multilateral international agreement, could conceivably find it necessary to agree to limit imports of that commodity or product <u>into</u> the CNMI. But under no circumstances could the requirements of such an international agreement

justify the imposition of import quotas on trade between the CNMI and the United States.

The United States balance of payments is the difference between all payments made by the United States to all other nations in the world and the payments made to the United States by all other nations. However, the CNMI is within the area in which the United States dollar is legal tender. Covenant §502(a)(1). Further, the Commonwealth is under the sovereignty of the United States. Covenant §§101, 1003(c). The CNMI, accordingly, is part of the United States for balance of payments purposes, and imposing import quotas on goods entering the United States from the CNMI neither improves the balance of payments position of the United States nor affects the value of the dollar.

Establishing import quotas on goods entering the customs territory of the United

States from the CNMI may protect industries within that customs territory from competition and thus, from possible economic loss. The United States, however, should not act to protect industry within the customs territory of the United States from competition from the CNMI, any more than it should protect industry in one state from competition with another. This is particularly so when the United States is obligated to assist in the economic development of the CNMI. Covenant §701.

The United States has a legitimate interest in ensuring that foreign exporters do not use the CNMI as a "pass through" point, transshipping their goods through it in order to circumvent textile quota agreements. But the substantial processing of goods into a product is not transshipment, as recognized by Headnote 3(a) and prior Customs rulings. Processing operations on sweaters

in the United States insular possessions have long been recognized as a legitimate economic activity, conferring substantial developmental benefits on the possessions. The import of 19 C.F.R. 12.130 is to regard this same activity as improper and tainted as if illegal, and conclusively brand it as an attempt to avoid quota agreements negotiated with foreign countries. As currently applied, section 12.130 enforces this same origin rule against textiles from both major foreign country suppliers and from tiny island possessions of the United States, which are wholly dependent on the tariff preferences which embody Congress's commitment to them. Further, both the language and long-standing interpretation of General Headnote 3(a), requiring both a minimum local value content and substantial processing operations to qualify for duty-free treatment, ensure that articles meeting

this criteria will not have been merely "transshiped" through the insular possessions to avoid textile quota restraints.

The unfairness of the textile origin regulation as applied to the CNMI becomes even more apparent when seen in operation. Since Customs has determined that substantial processing of sweaters in the CNMI fall short of substantial transformation, it requires an export visa from the country in which the apparel components originated as a condition for entry from the insular possessions.[3] It is unrealistic to expect that countries whose textile products are

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3. By agreement between the CNMI and the CITA, the visa requirement is presently being waived for shipments of knit sweaters up to a specified volume from the CNMI and Guam. However, the visa requirement remains in effect for other apparel items and for sweaters in excess of the specified volume.

covered by quotas will voluntarily deplete their quota allowance by issuing export visas for materials shipped to and processed in the insular possessions, rather than being processed in the quota country and exported directly to the United States. Thus, the ultimate result is that development of the type of industry in the CNMI which is anticipated by General Headnote 3(a) is effectively limited to the level of production allowed, if at all, by the visa waiver system being presently utilized as a matter of grace by the CITA. The regulation creates a disincentive to business entities importing textile materials for processing in insular possessions and, thus, to locating processing plants in the insular possesions, all of which has a chilling effect on the economic and commercial development and self-sufficiency of the insular possessions and

the CNMI, in direct contravention of Congress's stated policy.

Amicus curiae submits that these important policy considerations should have been, but were not, given weight by the courts below.

III. The lower courts have sustained the validity of the subject regulation issued without due process and in violation of the Administrative Procedure Act as concerns the Commonwealth of the Northern Mariana Islands

When the Department of the Treasury published the interim regulation, T.D. 84-171, 49 Fed. Reg. 31248, August 3, 1984 (Pet. App. 105a-108a), it was announced that the public notice and comment requirements of the Administrative Procedure Act ("APA"), 5 U.S.C. 551 et seq., would not be followed for the reason that "[p]ublic notice is inapplicable to these regulations because they are promulgated pursuant to section 204 of the Agricultural Act of 1956, as amended

(7 U.S.C. 1854), and are thus within the foreign affairs function of the U.S. and the foreign affairs exemption of 5 U.S.C. 553(a)(1)." 49 Fed. Reg. at 31251.

A primary purpose and intent of section 553 of the APA is to provide the public with reasonable notice and an opportunity to comment on proposed regulations before they take effect. Wagner Electric Corp. v. Volpe, 446 F.2d 1013, 1019 (3d Cir. 1972). The Court of International Trade found that the Customs Service did not provide reasonable notice in issuing the subject regulation, but the court excused the failure by finding that the regulation involved a "foreign affairs function" and so was exempt by virtue of 5 U.S.C. 553(a)(1). Mast Industries, Inc. v. Regan, op. cit. supra at 596 F. Supp. 1583.

For the reasons set forth in Point I, above, the Commonwealth of the Northern

Mariana Islands contends that this regulation is not a valid exercise of a foreign affairs function when applied to our United States Commonwealth, and so is not properly exempted from the notice and comment provisions of the APA.

Section 501 of our Covenant with the United States applies the due process provisions of the Constitution of the United States to the Commonwealth of the Northern Mariana Islands as if the Commonwealth were a state of the Union. The procedural requirements set out in the APA are held to be ". . . fundamental to due process . . ." Bell Lines, Inc. v. United States, 263 F. Supp. 40, 46 (S.D.W.Va. 1967); see Association of Nat'l Advertisers, Inc. v. F.T.C., 627 F.2d 1151, 1165 (D.C. Cir. 1979), cert. denied, 447 U.S. 921 (1980). This again points out the inherent contradiction in regulating the Commonwealth of the Northern Mariana Islands

as if it were a foreign country when due process provisions apply there. Certainly the Customs Service could not have made these regulations applicable to the products of New York or Peoria, Illinois without affording due process.

The legislative history of the foreign affairs function exception to the APA is helpful:

> The phrase "foreign affairs functions" used here and in some other provisions of the bill, is not to be loosely interpreted to mean any function extending beyond the borders of the United States, but only those "affairs" which so affect relations with other governments that, for example, public rulemaking provisions would clearly provoke definitely undesirable international consequences.

Administrative Procedure Act: Legislative History, S. Doc. No. 248, 79th Cong., 2d Sess. 199, 257 (1947).

The Commonwealth of the Northern Mariana Islands respectfully submits that providing the Commonwealth and its manufacturers with reasonable notice of the interim rules and an opportunity to comment upon them would have provoked no such "definitely undesirable international consequences." Rather, it would have afforded us the due process promised in our Covenant with the United States. Section 904(a) of the Covenant also provides that "[t]he Government of the United States will give sympathetic consideration to the views of the Government of the Northern Mariana Islands. . . ." We submit that therefore the federal government may not be permitted to avoid the reasonable notice and comment provisions required under the APA when seeking to apply the subject regulation to products of the CNMI.

CONCLUSION

The courts below have determined that the country of origin criteria in 19 C.F.R. 12.130 could properly be applied to products of insular possessions, including the CNMI, without any apparent consideration of the explicit terms of the Trusteeship Agreement and the Covenant, nor of the moral obligations of the United States to its possessions and dependencies, nor of Congress's long-established policy of fostering the development of industry in the insular possessions underlying General Headnote 3(a), nor even of the regulation's practical effect of frustrating those stated goals. The Commonwealth of the Northern Mariana Islands respectfully submits that the lower courts' judgments are, in fact, in conflict with these aforementioned considerations. The CNMI also perceives certain due process and procedural irregulatities in the manner in

which the regulation was promulgated. Consequently, amicus curiae respectfully urges that the detrimental effect of the lower court's opinions in this case should be addressed and remedied by the Supreme Court.

Respectfully submitted,

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